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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 110 (LJL)

5 LAWRENCE RAY,

6 Defendant.

Oral Argument

7 -----x

8 New York, N.Y.  
9 February 22, 2022  
10:30 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the  
Southern District of New York

16 BY: DANIEL R. SASSOON

MOLLIE E. BRACEWELL

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(Case called)

THE DEPUTY CLERK: Starting with counsel for the government, please state your appearance for the record.

MS. SASSOON: Good morning, your Honor. Danielle Sassoon, Mollie Bracewell and Lindsey Keenan, for the United States. And we're joined in the courtroom by Special Agent Kelly McGuire of the FBI.

THE COURT: Good morning.

MS. GLASHAUSSE: Good morning, your Honor. Allegra Glashausser, Marne Lenox, Peggy Cross-Goldenberg and Neil Kelly, representing Mr. Ray.

THE COURT: Good morning.

And good morning, Mr. Ray.

We are here today for oral argument on the motions *in limine*. I previously issued an order dated February 20, 2022, identifying specific motions as to which it would be helpful to have argument. With respect to those motions and the remainder of the motions, I expect to be able to render a written decision shortly. As to the remainder, I don't think that I particularly need argument.

Before we get to the motions, there are a couple of preliminary things that I wanted to address.

One of them is that in my February 20 order I directed the government to inform the Court whether the alleged victims in this case needed still to be referred to by pseudonym.

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1 Ms. Sassoon, why don't you address that.

2 MS. SASSOON: Yes, your Honor.

3 I think we misread the order, so I can just put on the  
4 record now that, beginning at this conference, apart from the  
5 victim whose name we move to testify under a pseudonym, we  
6 think it is appropriate to begin referring to victims by their  
7 names, with one exception, which I alerted your deputy to, and  
8 defense counsel to, given her unique present circumstances.

9 THE COURT: And that's Jane Doe 1, is that right?

10 MS. SASSOON: That is right. That is correct.

11 THE COURT: Ms. Sassoon, with respect to prior filings  
12 as to which the names were omitted, the question has occurred  
13 to me, having canceled those, it would be a lot of work I  
14 assume right now as the parties are preparing for trial to  
15 refile sets of papers. What I had in mind was the government  
16 submitting a letter that would be on ECF that would indicate  
17 the proper names that correspond to the Jane Does and the John  
18 Does.

19 Would that be acceptable, and what do you think of  
20 that?

21 MS. SASSOON: Yes, your Honor. Thank you for the  
22 suggestion. That will spare us some work.

23 THE COURT: There may be a need to engage in that work  
24 at some point.

25 Ms. Lenox, what's your view on that or

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1 Ms. Glashausser?

2 MS. GLASHAUSSER: That's fine with us, your Honor.  
3 Thank you.

4 THE COURT: Okay.

5 The second thing is that I understood from my  
6 courtroom deputy the parties wanted to discuss the trial  
7 calendar. Is that correct?

8 Ms. Lenox?

9 MS. LENOX: Yes, we do, your Honor.

10 So, we understand that your Honor's preferred schedule  
11 would be 9:30 to 5 p.m. Monday through Thursday with a half day  
12 on Friday.

13 The defense had been speaking with the government,  
14 although their position on this may have changed so I am not  
15 going to speak for them, but in the defense's perspective, I  
16 think a shorter day, with Friday being not a half day, makes  
17 more sense, and I'll explain why.

18 One, because Mr. Ray is incarcerated and so for  
19 reasons like the delay today I think in reality he may not make  
20 it to the courtroom until 9:30 or 10 in the morning, which  
21 would delay things unnecessarily.

22 I think the second reason is that I don't believe that  
23 shortening the day would actually have much of an effect on the  
24 ability to get in as much testimony. I don't think it would  
25 cut into testimony because our proposal would be that we have a

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1 truncated day with a limited break. So, rather than a full  
2 lunch hour, it would be, for example, 10 to 3 every day with a  
3 half an hour lunch break.

4 We also anticipate having, given the nature and  
5 complexity of this case, a number of arguments that will  
6 probably have to occur before or after the trial day. Having a  
7 more truncated day for the jury would allow the jury not to  
8 have to wait during those arguments, assuming that they happen  
9 in the morning. The jury is here at 9:30, even if we started  
10 argument at 9, depending how long it went, the jury may be  
11 waiting unnecessarily.

12 So, for those reasons and also personal ones having to  
13 do with child care in the morning, we would ask the Court for a  
14 schedule that is along the lines of 10 a.m. to 3 p.m. each day  
15 of the week with a half an hour lunch break.

16 THE COURT: Ms. Lenox, let me ask you one question.  
17 When you say 10 to 3, do you mean that that's when the jury  
18 would be present? I ask that question because I do have in  
19 mind that there will be occasions where I will need to address  
20 counsel before the jury comes in. I won't necessarily need  
21 every one of the lawyers here, just the lawyers who want to be  
22 here and need to be here to address the questions.

23 MS. LENOX: Certainly, your Honor.

24 And, yes, that is the proposal.

25 THE COURT: Okay. Let me hear from Ms. Sassoon.

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1 MS. SASSOON: Yes, your Honor. So, as defense counsel  
2 accurately stated, our position has evolved on this a little  
3 bit. In prepping our witnesses, it is apparent that their  
4 testimony is going to be lengthy. We expect that the  
5 cross-examinations will be lengthy.

6 We have concerns about a shorter day, which would then  
7 keep some of these victims on the stand for days. Our  
8 preference is to start earlier in the morning, so start with  
9 the jury at 9:30. If there are issues to address on a  
10 particular day, we could begin at 9 or earlier or tell the jury  
11 that they can come a little bit later that particular day.

12 If we had a 10-to-3 schedule with a half hour break,  
13 that would amount to four and a half hours of testimony; a  
14 9:30-to-5 day with a one-hour break would amount to six and a  
15 half hours of testimony.

16 We are not wedded to ending at 5, but I think a longer  
17 day would help keep the trial going and ensure that we end  
18 before April. We are concerned with the shorter day that the  
19 trial could drag into April.

20 The only other thing is, if we're going to have a  
21 shorter day, I think a 9:30 start potentially makes more sense  
22 if the jury has less time to eat. If they got out at 2:30,  
23 that is a little easier for them than if they get out at 3.

24 THE COURT: I am going to take it under advisement and  
25 I'll let you know I think at the time of the pretrial

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1 conference.

2 So, the last couple of things that I had have to do  
3 with the defense motion for reconsideration. And I have  
4 rendered a decision on that. I'm prepared to read that.

5 The defense moves for reconsideration of my order  
6 denying its prior request for a *Franks* hearing in connection  
7 with its motion to suppress materials seized pursuant to a cell  
8 site location information warrant, an e-mail accounts warrant,  
9 and an iCloud accounts warrant. The motion to suppress was  
10 based on the assertion that the warrant affidavits omitted  
11 information calling into question the reliability of FV-1. The  
12 motion now before me is based on information turned over as  
13 part of the 3500 material that a witness told a government  
14 agent prior to the affidavits being prepared that he had been,  
15 the witness had been told by several of Female Victim 1's  
16 friends that she embellished things at times and was  
17 pathological. The witness also relayed that Female Victim 1  
18 had told him, allegedly untruthfully, that she had failed her  
19 driver's test when in fact she had never taken her driver's  
20 test and offered an anecdote that at one time while the witness  
21 and Female Victim 1 were in their sophomore year at school,  
22 Female Victim 1 described seeing something that was glowing on  
23 a walking path near the dorm, which the witness knew must have  
24 been an embellishment because there was no way it could be  
25 true.

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1           The motion also is based on Female Victim 1's  
2 statements to the FBI in July 2019. At that time Female Victim  
3 1 relayed that she had concealed that she had a job working  
4 with a particular named individual and -- I'm sorry. Let me  
5 start again. Female Victim 1 relayed that she had concealed in  
6 a conversation with Mr. Ray that she had a job working with a  
7 particular named individual and told Mr. Ray instead that that  
8 individual was a prostitution client. In October 2021, Female  
9 Victim 1 admitted to the government that the individual was a  
10 prostitution client. The defense has also offered evidence  
11 that when the government met with that individual in May 2019,  
12 he stated that he did not have a sexual relationship with  
13 Female Victim 1, but the defense has also offered evidence to  
14 suggest that the government believed that the male individual  
15 was not being fully open at the time, even though the  
16 government at that time also said that it did not have  
17 knowledge to contradict what the individual said.

18           The motion is denied. A motion for reconsideration is  
19 not an opportunity to relitigate an issue previously decided by  
20 Court, unless there is something the Court overlooked. *Shrader*  
21 *v. CSX Transportation Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).  
22 In the Court's May 26, 2021, opinion, the Court considered and  
23 rejected the defense's argument that it was entitled to a  
24 *Franks* hearing on the basis that the search warrant affidavits  
25 omitted evidence that Female Victim 1's friends reported that



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1 she stretched the truth for effect and wanted to make herself  
2 more exciting and she was best at telling stories. The  
3 evidence that Female Victim 1's friends told the witness that  
4 Female Victim 1 embellished things at times is not  
5 qualitatively different and is to some extent identical to that  
6 which the Court considered on the original motion to suppress.

7 The Court's conclusion doesn't change. "The fact that  
8 a person that a reputation for stretching the truth while in  
9 high school does not raise meaningful doubts about that  
10 person's credibility with respect to statements that she made  
11 years later as an adult to law enforcement about a crime in  
12 which she participated but of which she was also a victim."

13 Put another way, the incidents of stretching the truth  
14 or even lying to friends in high school does not meaningfully  
15 call into question the veracity of Female Victim 1's statements  
16 to law enforcement years later that she was extorted, forced to  
17 engage in labor, and sex trafficked. I recognize that some of  
18 what the witness told law enforcement relates to their  
19 sophomore year in college and not to high school, but that does  
20 not change my view that the omission of the information was  
21 immaterial to the probable cause determination.

22 The information that Female Victim 1 concealed  
23 information from law enforcement about the prostitution client  
24 falls into a different category. That information arguably  
25 would have been material if it was known to law enforcement at

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1 the time. But I need not consider that question of whether it  
2 was material because there is no evidence it was known to law  
3 enforcement at the time of the warrants.

4 That concludes my ruling with respect to that motion.

5 The next issue that I want to discuss is one of the  
6 motions *in limine* relates to a summary chart that the  
7 government anticipates offering containing factual descriptions  
8 of sexually explicit video files that show one of the alleged  
9 victims in this case providing "sexual services" to "strangers"  
10 in various locations in and near New York City.

11 As I understand it, the defense does not object to the  
12 summary chart in theory, but argues that it is premature to  
13 rule on the admissibility of the chart because, number one, the  
14 evidence upon which it has been based has not been received in  
15 evidence and, second, the parties are still meeting and  
16 conferring about the contents of the chart.

17 The defense asks that the Court consider an  
18 alternative chart and hear the defense's objections to the  
19 government's proposed summary judgment.

20 I am prepared to review the defense's alternative  
21 chart and to hear the objections to the government's proposed  
22 chart. I am going to direct that the parties meet and confer  
23 if they haven't already with respect to the summary chart and  
24 that the defense submit its alternative chart --

25 February 25 for the defense?

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1 MS. LENOX: That's fine, your Honor.

2 THE COURT: -- by February 25 along with letter no  
3 more than three pages with its objections to the government's  
4 chart. The government will then respond by the next day,  
5 February 26.

6 Then, before we get to argument, and not listed on my  
7 list of questions, I did receive from the government copies of  
8 the cell site charts. I wonder if the government would walk me  
9 through what I should understand from those charts.

10 MS. SASSOON: Before we move on, can I just ask for  
11 clarification from the Court. With respect to the summary  
12 chart, this chart is intertwined with the evidence about forced  
13 labor and the testimony of this particular victim about what's  
14 happening in the chart.

15 THE COURT: My ruling doesn't presage a decision with  
16 respect to the admissibility of it. I would like to make sure  
17 that we keep all of the pieces moving.

18 MS. SASSOON: Understood, your Honor. Thank you.

19 THE COURT: I haven't made a decision with respect to  
20 the admissibility.

21 MS. SASSOON: Thank you for the clarification.

22 THE COURT: I am actually just looking for copies of  
23 the cell charts you submitted to me.

24 Do you have an extra set by any chance?

25 MS. KEENAN: I do, your Honor.

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1 THE COURT: Do you want to pass them up?

2 There are a lot of pages. You don't have to take me  
3 through every one of them.

4 MS. KEENAN: Okay. The first several pages of the  
5 chart, your Honor, it's double sided, so the first three pages,  
6 double sided, are just general information about what cell  
7 sites look like so that the jury doesn't think a cell site is a  
8 mysterious device and the agent will testify about, you know,  
9 how he's able to identify cell sites in these locations from  
10 his experience.

11 THE COURT: Okay.

12 MS. KEENAN: Following that, there are a couple of  
13 pages of phone records extracted from the phone records at  
14 issue in this case, so that the agent can describe to the jury  
15 what he looks for to tell where a phone is connecting to a  
16 particular cell site.

17 THE COURT: Are these examples actually taken from the  
18 records that you expect to offer into evidence?

19 MS. KEENAN: They are, your Honor.

20 Following that there are a couple of pages with one  
21 blank page where you can see a number of small dots on the map  
22 and concentric circles. The small dots reflect the location of  
23 actual cell sites from the service provider during the time  
24 period at issue, and the concentric circles are meant to  
25 identify the distance between the various cell sites so you can

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1 see how many sites fall, for example, within 220 yards or a  
2 quarter of a mile or a half a mile.

3 THE COURT: Is there anything magical about the center  
4 point on that chart, which looks like it is Park Avenue between  
5 35th and 36th Streets in Manhattan?

6 MS. KEENAN: There's nothing magical about it, your  
7 Honor, except there are a number of cell site connections at  
8 issue in this case around that area. There are similar maps  
9 for New Jersey. And I noted in my e-mail to your Honor that  
10 there is a blank page because we are awaiting information from  
11 AT&T to complete the density issue with respect to Hoboken, New  
12 Jersey.

13 Then I think if your Honor turns to the page marked  
14 various times on January 9, numbered in chronological order --

15 THE COURT: I got it.

16 MS. KEENAN: Okay. So the rest of the chart sort of  
17 follows this pattern where there is a day of cell site  
18 information from a given device on the top page and the cell  
19 site connections are numbered 1, 2, 3, 4. So those are in  
20 chronological order.

21 I think what the agent would say is that these cell  
22 site connections reflect a pattern of travel from somewhere in  
23 the vicinity of Piscataway, New Jersey, to somewhere in the  
24 vicinity of Midtown Manhattan and then back again beginning at  
25 4:11 p.m. on January 9 and returning at 10:59 p.m. on January

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1 9.

2 THE COURT: But I mean presumably there's going to be  
3 something that goes before that reflects a pattern of travel.  
4 I take it it is going to reflect where the phone is at  
5 different points in time.

6 MS. KEENAN: That's right, your Honor. So these  
7 numbered 1, 2, 3, 4, these are numbered cell site connections.  
8 There is a cell site connection at 4:11 p.m. indicating the  
9 phone is used in Piscataway at 4:11, then if you travel up, the  
10 No. 2 this is a cell site connection in Midtown Manhattan at  
11 5:42 p.m., another at 8:48 p.m. indicating the phone is still  
12 in Manhattan and then back down at No. 4 at 10:59 p.m. a  
13 connection in Piscataway.

14 THE COURT: Maybe you can look at the next page. I  
15 take it I can use the actual names of individuals on this page?

16 MS. KEENAN: You can, your Honor.

17 THE COURT: What I am looking at is the page that  
18 says AT&T cell site locations utilized by Isabella Pollok's  
19 device, and AT&T cell site locations utilized by Claudia  
20 Drury's device, January 9, 2018.

21 What is the significance of the circle?

22 MS. KEENAN: So the circle -- and I apologize if these  
23 aren't in color. I think it is a little bit easier to see if  
24 they are in color, but the cell site that Claudia Drury's  
25 device connected to is within the red circle. The cell site

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1 that Isabella Pollok's device connected to is within the blue  
2 circle.

3 THE COURT: Does that reflect anything about where the  
4 device is or something about the strength of the signal from  
5 the tower?

6 MS. KEENAN: I think, referring back to the earlier  
7 maps with cell site density and knowing where various cell  
8 sites are located in Manhattan during this time period, the  
9 agent could say it's very likely that each of these devices are  
10 being used within, you know, two to three blocks of where this  
11 circle is located.

12 THE COURT: Got it. So this will summarize the  
13 agent's testimony as to how far from a particular location the  
14 device likely is?

15 MS. KEENAN: That's right, your Honor. So, for each  
16 date in question, there is a path-of-travel map for Isabella  
17 Pollok's device, and then there is a location- and  
18 time-specific map for Isabella Pollok's device and Claudia  
19 Drury's device.

20 If you are still looking at the January 9 map with  
21 just one circle, there is also an excerpt of their call records  
22 showing calls back and forth to each other on that date.

23 THE COURT: All right. Thank you.

24 Does the defense wish to be heard?

25 MS. GLASHAUSSER: Yes, your Honor, because I'm

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1 concerned there might be -- maybe I have the confusion, but I  
2 understood that the significance of the circles on the page we  
3 are talking about, January 9 and the other pages, is not going  
4 to be a summary of the agent's testimony, but that the circles  
5 are not of a particular size. They are just meant to show that  
6 those cell sites, which are dots, is where the phones connected  
7 to. So on the previous pages there are dots to indicate cell  
8 sites. I see no justification to have these larger circles,  
9 which are still just telling us where the cell site is.

10 So, for example, I understood the explanation for why  
11 one is larger than the other to simply be because if they were  
12 the same size then it would be purple. That's not something to  
13 do with the specific distance, but something else.

14 I also understood that the size of the circles does  
15 not represent what the agent would testify about the -- the  
16 strength of the signal or how likely the phone is to be in that  
17 particular shape, it's just to show the cell site itself. So  
18 an accurate map I think would just show a dot and say this is  
19 the cell site where the phone connected to.

20 THE COURT: Let's ask the government.

21 If the defense is right, why wouldn't just a dot and  
22 the arrows be sufficient?

23 MS. KEENAN: I think a dot and arrows would be fine,  
24 your Honor. I actually think that the defense probably used to  
25 a program that our office uses more regularly and that this



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1 outside expert has a different program, so the dots look  
2 different. But I certainly can ask him if he's able to make  
3 smaller circles.

4 THE COURT: I guess the question is, does the -- the  
5 circle could be read to suggest something about the radius  
6 within which a device was located in relationship to the cell  
7 tower and that it's meaningful whether the circle is the  
8 smaller circle or the larger circle.

9 MS. KEENAN: So I think the agent's testimony will be  
10 very clear that he has no way to identify that a cell phone is  
11 within this circle. It's the cell site that is within the  
12 circle.

13 THE COURT: So I guess my question in my mind still  
14 remains: Why have the circles at all? Presumably the cell  
15 tower doesn't extend from 37th Street to 33rd Street and from  
16 Madison Avenue to Lexington Avenue, looking at the bigger  
17 circle on the January 9 chart.

18 MS. KEENAN: I am not sure if you mean presumably  
19 literally the cell tower is not multiple blocks wide.

20 THE COURT: Yes. It is not multiple blocks wide.

21 MS. KEENAN: Yes.

22 THE COURT: So that big circle doesn't signify  
23 anything as I understand what you're saying.

24 MS. KEENAN: Not necessarily.

25 It truly is meant, your Honor, to draw the eye to

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1 where the cell site is. So I don't think there is a problem  
2 with asking the agent to make smaller circles.

3 THE COURT: I think you need to go back and do a  
4 little bit more work on these charts.

5 MS. KEENAN: Okay.

6 THE COURT: Let me hear argument.

7 I will hear first from the government with respect to  
8 defense *in limine* motion 1, having to do with forced labor  
9 through sexual services evidence.

10 MS. SASSOON: Yes, your Honor. I'm happy to address  
11 specific questions that would be most useful to the Court, but  
12 in --

13 THE COURT: I mean, I guess the question in my mind is  
14 what is the limiting principle to what labor and services is in  
15 your mind. And if I read the statute as broadly as you want it  
16 to be read, what's left of any of the limitations in the sex  
17 trafficking statute? Wouldn't everything that constitutes sex  
18 trafficking fall within the forced labor statute?

19 Those are the things that are on my mind.

20 MS. SASSOON: Yes, your Honor.

21 To address the latter question, I think there are many  
22 crimes in the federal code that could be charged in one or way  
23 or sometimes in multiple ways. This conduct, though --

24 THE COURT: Sure. There's a well established Supreme  
25 Court principle to that effect. But --

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1 MS. SASSOON: But this conduct --

2 THE COURT: -- these statutes were passed at the same  
3 time, right?

4 MS. SASSOON: This conduct in fact is not -- we are  
5 not alleging that this conduct constitutes sex trafficking.  
6 She is not getting paid for the sexual services, we are not  
7 alleging he was paid for the sexual services, and we are not  
8 claiming that this particular conduct constitutes sex  
9 trafficking.

10 The forced labor statute, though, is broad in the  
11 sense that it does cover things beyond things of, you know,  
12 direct economic value, and that it has multiple means by which  
13 a person can obtain forced labor that we think apply to the  
14 conduct here.

15 The sexual services she's providing to other people  
16 falls within the definition of labor and of services. He's  
17 obtaining it from her by means of the methods described in the  
18 statute.

19 THE COURT: Help me a little bit more with your view  
20 of what labor is. I don't know that anybody in this courtroom  
21 is saying that the conduct is good conduct.

22 MS. SASSOON: Yes. I do think --

23 THE COURT: What is the limiting principle?

24 I have read Judge Ross' opinion in the Eastern  
25 District, and you could describe all kinds of things of all

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1 kinds of duration as being labor under that definition. And it  
2 is hard to imagine that Congress actually intended that or  
3 could have even prescribed that into the Constitution. There  
4 has to be some limiting principle to what labor is.

5 MS. SASSOON: Well, I think if it's not labor it  
6 certainly is services.

7 Just one more point about the sex trafficking statute,  
8 and I think I touched on this already, but the sex trafficking  
9 statute is commercial sex services. We are not alleging --

10 THE COURT: I know. But my question is, if you're  
11 right -- and I'm still puzzling over this -- if you're right,  
12 why couldn't the government relieve itself in every case of the  
13 need to prove a commercial act by charging the identical  
14 conduct as forced labor?

15 MS. SASSOON: I do think in certain circumstances  
16 there will be some overlap. I don't have the legislative  
17 history in front of me, but it does show that Congress did  
18 intend to sweep fairly broadly to cover conduct constituting  
19 involuntary servitude, of which this, you know, falls under  
20 some of what was contemplated there.

21 I also don't think that this is appropriately resolved  
22 at this particular stage, because there's no summary judgment  
23 concept in a criminal trial. So to the extent that our  
24 evidence falls short of meeting the statutory definition or  
25 creating some sort of constitutional issue, we think that is

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1 appropriately addressed at the Rule 29 stage of the trial.

2 THE COURT: Would the evidence be relevant to the  
3 charges if it did not itself constitute forced labor --

4 MS. SASSOON: Yes.

5 THE COURT: -- in violation of the statute.

6 MS. SASSOON: Yes. That's where I was going to turn  
7 next. We have a few different theories of admissibility. The  
8 first is that it is direct proof of forced labor as we have  
9 just been defining it. But it is also proof of one of the  
10 means and methods of the enterprise as laid out in our brief.

11 It is also direct proof of the manual forced labor  
12 that took place in North Carolina in two ways:

13 The first is the government's going to be arguing that  
14 some of violence the and coercion that that was taking place in  
15 advance of the trip to North Carolina is necessary to  
16 understand the threats and force that these victims were under  
17 that led them to perform the forced labor. And if you look at  
18 the summary chart, some of the videos actually are from June of  
19 2013, which is during the time frame of the forced labor.

20 We are not in a position to say that these videos were  
21 definitely taken in North Carolina, because there was some  
22 travel back and forth during the period of the forced labor  
23 conspiracy, but the fact that during the time that this victim  
24 was performing labor in North Carolina she was subjected to  
25 this serious harm within the definition of the statute we think

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1 is direct proof of the forced labor that took place in North  
2 Carolina.

3 Under the statute serious harm is defined as any harm,  
4 whether physical or nonphysical, including psychological,  
5 financial, or reputational harm, that is sufficiently serious  
6 under all the surrounding circumstances to compel a reasonable  
7 person of the same background and in the same circumstances to  
8 perform or to continue performing labor or services in order to  
9 avoid incurring that harm.

10 So it is our argument that the fact that she is  
11 incurring this serious harm is part of what's compelling her to  
12 continue engaging in the forced labor in North Carolina during  
13 this exact same time frame. As we have laid out in our  
14 briefing, the forced sexual services were intertwined with  
15 threats of reputational harm as referred to in the statute.  
16 The defendant told the victim on numerous occasions that he was  
17 threatening to post this content on Facebook and to divulge it  
18 to her colleagues and friends.

19 THE COURT: How do you expect that the evidence will  
20 connect that up to acts of forced labor?

21 MS. SASSOON: Contemporaneously with these forced  
22 sexual services, this victim is performing forced manual labor  
23 in North Carolina for free. So to understand why --

24 THE COURT: I heard what you said, but do you expect  
25 that the evidence will show that Mr. Ray forced the victim to

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1 engage in the labor by threatening to disclose these videos?

2 MS. SASSOON: I don't know if the connection will be  
3 as direct as that. But, as Don Hughes will testify, this  
4 combination of methods is all part of a single pattern used to  
5 achieve certain ends.

6 So that's true of a lot of the government's proof in  
7 this case where the defendant wasn't necessary entirely  
8 explicit, "I'm forcing you to do this in order to achieve this  
9 particular end," but we think the evidence will connect the  
10 dots that these types of tactics were designed to accomplish  
11 the criminal ends, including the forced labor.

12 THE COURT: In your chart, how -- give me the length  
13 of time and the dates for the videos.

14 MS. SASSOON: Yes.

15 So the first entry on the chart is September 11, 2012.

16 The last entry is May 2, 2014.

17 THE COURT: When was the North Carolina visit?

18 MS. SASSOON: That was the summer and fall of 2013.

19 THE COURT: So how would a sexual act in September of  
20 2012, a year before, almost a year before the trip to North  
21 Carolina, be relevant to the forced labor in North Carolina,  
22 and how would the conduct that took place afterwards?

23 MS. SASSOON: Certainly afterwards is not going to be  
24 proof of manual labor that took place in 2013. But one of the  
25 defendant's methods here was long-term grooming for particular

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1 ends, and that's true of many of the predicate racketeering  
2 acts.

3           So, for example, with the sex trafficking victim, our  
4 evidence is going to show that he was laying the groundwork for  
5 the ultimate sex trafficking over the course of years. And  
6 here there is a continuous pattern with these videos that  
7 escalates. As Don Hughes, the expert, will also testify, it is  
8 a typical coercive practice and pattern to engage in escalating  
9 grooming and coercion that culminates in things like forced  
10 manual labor, sex trafficking. She will also testify that  
11 sexually degrading scenarios like this eviscerate a victim's  
12 sense of agency and ability to leave, you know, the coercive  
13 relationship.

14           So this culminates in some ways in what happens in  
15 Pinehurst, North Carolina, where the evidence will show that  
16 this victim was not only being forced to perform labor on this  
17 property, but was suffering intense physical abuse -- some of  
18 the exhibits capture this abuse -- of her being punched and  
19 beaten and captures bruises on her face. And to understand how  
20 she ended up in this scenario, why she is not leaving the  
21 property and why this constitutes forced labor, this is part of  
22 that necessary context that results and culminates in the  
23 manual labor in North Carolina.

24           THE COURT: Any other relevance of it?

25           MS. SASSOON: I also think that this is corroborative



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1 of the sex trafficking victim's testimony. It's very clear  
2 that a cornerstone of the defense strategy is attacking the  
3 credibility of that particular victim.

4 She is also going to describe being made to engage in  
5 sexually humiliating acts. This evidence corroborates that  
6 that is the means and methods of the enterprise of the  
7 defendant with respect to multiple victims. It shows his  
8 intent and --

9 THE COURT: Is there evidence that the sex trafficked  
10 victim was aware of this conduct?

11 MS. SASSOON: She was not -- I don't think there's  
12 evidence that she was aware of these videos being made. But  
13 she was subjected to some similar sexual grooming by Isabella  
14 Pollok, who was a coconspirator of the racketeering enterprise.  
15 So in the same way the defendant would direct Isabella Pollok  
16 to go with the forced labor victim and do these videos, he  
17 would sometimes direct Isabella Pollok to engage in sexual  
18 activity with the sex trafficking victim so it is a similar  
19 tactic being used within the enterprise to achieve the  
20 predicate acts of the enterprise.

21 THE COURT: Is there evidence that is going to refer  
22 to her by name, that Claudia Drury was aware of these acts with  
23 respect to the other alleged victim?

24 MS. SASSOON: No.

25 THE COURT: Anything else?

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1 MS. SASSOON: I would just note -- this is mentioned  
2 in our brief -- that a similar theory of forced labor was  
3 charged as a predicate racketeering act in the trial of Robert  
4 Kelly in the Eastern District of New York.

5 THE COURT: Let me ask you, Ms. Sassoon, in your brief  
6 you do talk about a theory on which the defendant engaged this  
7 victim in developing pornographic materials and that  
8 constitutes forced labor.

9 Can you explain that one to me.

10 MS. SASSOON: Yes.

11 So, if you look at the statute, the language is  
12 whoever knowingly provides or obtains the labor or services of  
13 a person. So, starting with "provides," the defendant provided  
14 the sexual services of this victim to other people. But he  
15 also knowingly obtained the services of this victim by  
16 ultimately being a recipient of the pornographic videos.

17 THE COURT: Let me ask you one other question before I  
18 turn to Ms. Lenox. Are you planning on opening on this  
19 evidence, and when in the course of the trial would you be  
20 offering it?

21 I take it it's through the first witness probably.

22 MS. SASSOON: So, yes, we would intend to open on  
23 this.

24 The victim of this particular conduct is probably  
25 going to testify somewhere in the middle of the trial. She is

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1 not the first witness.

2 Then the special agent who we intend to authenticate  
3 this chart is also not going to be the first witness.

4 But we would like to open on this conduct.

5 THE COURT: Let me hear from the defense.

6 MS. GLASHAUSSER: Thank you, your Honor.

7 I think your Honor gets right to the point of our  
8 argument by asking what the limiting principle is in forced  
9 labor. In the Second Circuit the cases do limit it by having  
10 some connection to an activity that generates some sort of  
11 monetary benefit.

12 So the case that the government relies on, *Marcus*, has  
13 a sexual component, but the labor portion of it is that the  
14 person is made to make a website that the defendant made money  
15 from. So there is not any Second Circuit case law that would  
16 permit the government's theory.

17 The closest case that comes to the government's theory  
18 is a Tenth Circuit case in *Kaufman*, but it's not the same. In  
19 *Kaufman* --

20 THE COURT: Why not?

21 MS. GLASHAUSSER: Because in *Kaufman* as well, it is a  
22 broader economic enterprise that the defendants are running.  
23 They're running an entire business that includes a sexual  
24 component, but they have people working on their farm or their  
25 property which makes their entire income. So that is clearly

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1 an economic -- it has an economic component.

2 THE COURT: This is sort of suggested in *Kaufman*.  
3 What if there was evidence that a defendant forced somebody to  
4 engage in sex that was then videotaped and the videotapes were  
5 for the personal titillation and enjoyment of the defendant?  
6 Under your theory that would not constitute forced labor.

7 MS. GLASHAUSSER: Correct. And the Second Circuit has  
8 not indicated that that would constitute forced labor.

9 THE COURT: Also, I suppose on your theory, if we take  
10 it out of the sexual context, if you had a musician that you  
11 forced to play music for your benefit and the benefit of your  
12 friends or some, you know, sports athlete, you know, a gymnast  
13 who you required to engage in gymnastic activities for your  
14 benefit and the benefit of your friends, but you didn't make  
15 money from it, it would constitute forced labor.

16 MS. GLASHAUSSER: I think it would be different if  
17 those people were professional musicians or professional  
18 gymnasts, who were ordinarily paid for that type of activity  
19 and they were being forced to do it for free. That is exactly  
20 the sort of activity that you would expect to be paid for.

21 As your Honor points out, the crime, if you're forcing  
22 somebody to have sex for money, is sex trafficking. One of our  
23 big concerns in raising this motion *in limine* is that the jury  
24 will have a confusion between the sex trafficking and this  
25 evidence, which is not forced labor and is otherwise

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1 irrelevant.

2 In the government's case we don't believe we have seen  
3 any videos to support the sex trafficking charge. So there  
4 will not be traffic graphic sexual videos to support that  
5 charge. And to allow the government to introduce graphic  
6 sexual videos of somebody else who is not related to the sex  
7 trafficking charge at all would be incredibly prejudicial and  
8 allow them to bolster a totally separate charge with evidence  
9 that really is unrelated.

10 So, for the forced labor itself, I heard the  
11 government today suggest that it was connected, that the sex  
12 was connected to the manual labor in North Carolina. That has  
13 not been a theory the government has advanced that we have  
14 heard until just now. It's not the theory that's in the  
15 indictment, which limits the forced labor count to the forced  
16 labor in North Carolina.

17 I think when your Honor pushed the government you  
18 could hear that there is no direct relationship between those  
19 two. These are completely separate activities. One, that if  
20 the government proves their evidence, it likely would be forced  
21 labor, manual labor. That's what forced labor -- that's in the  
22 heartland of the forced labor statute, and sex, which really  
23 has nothing to do with the forced labor statute.

24 THE COURT: I mean, doesn't the indictment, though,  
25 charge that one of the means and methods of the conspiracy was

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1 the sexual manipulation of the victims?

2 Isn't the government at least permitted to offer  
3 evidence to, you know, support that portion of the indictment?  
4 And doesn't this do that?

5 MS. GLASHAUSSER: I think that there are ways the  
6 government -- there are portions of this that would be relevant  
7 under that section. I don't hear that as what the government  
8 is introducing this evidence for. They seem to be firmly  
9 introducing it for forced labor.

10 THE COURT: I heard them to that effect also.

11 MS. GLASHAUSSER: Right.

12 THE COURT: But at this stage, *in limine*, the question  
13 is, is this relevant to any, you know, viable charge and to the  
14 charges that are in the indictment? The indictment certainly  
15 alleges that one of the means and methods of the conspiracy was  
16 this sexual manipulation of the victims.

17 MS. GLASHAUSSER: If Rosario is planning to testify to  
18 the fact that she had these sexual activities and that the  
19 government wants to use that as evidence of the means and  
20 methods of the alleged enterprise, I think that is a different  
21 question, your Honor.

22 If your Honor were to admit it for that purpose, the  
23 videos themselves should still be excluded, because the videos  
24 are not necessary to that presentation. And the videos  
25 themselves are not at all limited. There are I think

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1 approximately 40 of them which the government seeks to  
2 introduce. I believe 11 of them are clips from one evening.  
3 That seems to be one sexual act, but there are separate  
4 individual videos on the chart. Allowing that would be  
5 exceedingly prejudicial in relationship to its probative value  
6 and create a very strong risk of confusing the jury about what  
7 that large body of evidence is being introduced for.

8 THE COURT: So, Ms. Glashausser, are you saying that  
9 you don't object to the facts, but just the videos themselves,  
10 including the fact that these were videotaped?

11 MS. GLASHAUSSER: We object that those would be  
12 appropriate evidence of forced labor. But if the government  
13 were planning to introduce it for the other purpose that your  
14 Honor suggested, we would object to the videos themselves.

15 THE COURT: Okay.

16 MS. GLASHAUSSER: However, I don't think that  
17 conceding that small piece changes the main part of our  
18 argument, which is that admitting all of this evidence either  
19 through testimony or videos, depending on how much that  
20 testimony is, does create this risk of confusion and the need  
21 to sort of cross-examine Rosario about many instances of sexual  
22 conduct, about what happened, when, and the circumstances,  
23 which really are not directly relevant to anything in the case.

24 The other thing that I would like to point out is the  
25 government mentioned towards the end of their presentation that

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1 this evidence should be corroborative of sex trafficking. And  
2 that should squarely be rejected. This has nothing to do  
3 with --

4 THE COURT: You know, I may or may not ultimately  
5 agree with you as to whether the evidence is sufficient to  
6 establish the forced labor charge. But if it is relevant on  
7 some theory of the case, then doesn't it come in? We can talk  
8 about exactly what comes in, but it comes in. And then at the  
9 time of the charge at the end of the case, or perhaps earlier  
10 than that, at the end of the government's case, I can issue a  
11 ruling with respect to how it is relevant or not. And if the  
12 government doesn't convince me that it's relevant to forced  
13 labor, maybe you even get an instruction that says you heard  
14 this evidence about --

15 Ms. Sassoon, is this Jane Doe 1 that we are talking  
16 about.

17 MS. SASSOON: This is Felicia.

18 THE COURT: That Felicia engaged in this activity,  
19 that's not the forced labor, and you get an instruction with  
20 the evidence that comes in.

21 MS. GLASHAUSSE: Your Honor, the damage will have  
22 been done by that point. These graphic sexual videos are the  
23 only ones that the government intends to introduce in a case  
24 that has a sex trafficking charge.

25 THE COURT: Let me turn to Ms. Sassoon, because I



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1 understood that they were not going to introduce the actual  
2 videos or show the videos to the jury, just introduce the fact  
3 that the videos were taken.

4 Ms. Sassoon?

5 MS. SASSOON: Your Honor, our plan, if this is deemed  
6 admissible, was to admit Government Exhibit 1405, admit the  
7 underlying exhibits, not play them, potentially show a  
8 nongraphic still or stills to Felicia and/or the agent to  
9 identify who is in the video and just to give the jury  
10 reassurance that this is what we are saying it is.

11 And then in closing to say to the jury: You have this  
12 chart, it describes the videos. We have spared you seeing  
13 these graphic videos. If you feel you need to see them in  
14 reaching your verdict, they are available to you. And that's  
15 in part because generally with summary charts you have a  
16 witness who is describing the evidence, but the jury should  
17 also have an opportunity to assure itself that what the chart  
18 is describing is what it is.

19 We thought that this was the least prejudicial way of  
20 introducing what is graphic inescapably graphic content. We  
21 did not want to subject the jury to watching all these videos.  
22 We are attempting in a variety of ways to streamline the proof.

23 I have some other points I would like to make, but I  
24 can sit until counsel --

25 THE COURT: Ms. Glashausser? Is there anything

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1 further.

2 MS. GLASHAUSSER: Your Honor, with respect to  
3 introducing the chart and the videos, when I said that your  
4 Honor should exclude the videos, I meant the chart as well. I  
5 see that they are connected.

6 THE COURT: You have confused me also. Because I had  
7 understood your challenge to be with respect to how graphic the  
8 videos are and not with respect to the fact that Felicia will  
9 testify that she was forced to engage in this activity and that  
10 it was videotaped, etc.

11 MS. GLASHAUSSER: Correct, your Honor. It --

12 THE COURT: You don't object to that testimony,  
13 correct?

14 MS. GLASHAUSSER: If her testimony is, I engaged in  
15 this activity under these circumstances, period, and if the  
16 government is just admitting that for their means and methods,  
17 so a different reason than they articulated today --

18 THE COURT: Then you would have no objection?

19 MS. GLASHAUSSER: We would not object. We would  
20 object to the videos and the chart because to us the two are  
21 connected. The chart is a way to admit the videos. The  
22 government would need to authenticate the videos in order to  
23 admit the chart and the videos --

24 THE COURT: I don't think that's right, by the way. I  
25 think that a summary exhibit can be received even if the

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1 underlying evidence is not received, but I take the  
2 government's point that it is helpful for the jury to be able  
3 to know that the summary chart is out there. But go ahead,  
4 Ms. Glashausser.

5 MS. GLASHAUSSER: I understand your Honor's point, but  
6 responding to the government's point that they are seeking to  
7 admit both the chart and the video, it does not solve our  
8 objection that they do not intend to play the whole of the  
9 videos to the jury. To have the summary chart and the videos  
10 introduced as the government seeks to do would require Rosario  
11 to go through each of those videos and authenticate them. It  
12 might require us to cross-examine her on the circumstances of  
13 the video.

14 As the chart is now, it is quite detailed, and it  
15 creates a real risk of the prejudice from this evidence, well  
16 overtaking any probative value under Rule 403, because this  
17 evidence isn't actually relevant to forced labor and it seems  
18 the government plans to use it to bolster their sex trafficking  
19 charge, which would be completely improper. That creates a  
20 risk that the jury will use this evidence to fill the gaps in  
21 the sex trafficking charge to convict Mr. Ray. That's the sort  
22 of thing your Honor should exclude under Rule 403.

23 THE COURT: Okay. Thank you, Ms. Glashausser.

24 Ms. Sassoon.

25 MS. SASSOON: Yes. I would just like to clarify a

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1 couple of things. In our opposition to the defendant's motion  
2 *in limine*, I think we made pretty clear that we are seeking to  
3 introduce this for a number of reasons, one being that it's  
4 directly forced labor; another that it is a means and methods  
5 of the enterprise and also -- and this is on page 5 -- we do  
6 say that it's proof of the defendant's forced labor of Felicia  
7 in North Carolina. So we did lay out all of those theories in  
8 our brief.

9 With respect to means and methods, not only --

10 THE COURT: Let me just be a little more blunt in  
11 terms of what I need to decide now. In your opening, are you  
12 going to be -- you are not going to be showing the videos,  
13 right?

14 MS. SASSOON: No.

15 THE COURT: You are not going to be showing the  
16 summary chart, are you?

17 MS. SASSOON: No.

18 We will only be saying this took place, and I don't  
19 think we will even be saying that there is a violation of 18  
20 U.S.C. Section 1589. We are going to describe what they are  
21 going to hear from the witness and the evidence they are going  
22 hear about, but we are not going make argument about this  
23 therefore proves X.

24 THE COURT: Right. I assumed that you were not going  
25 to say that either this proves forced labor or this, you know,

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1 this corroborates that there was the sex trafficking of Claudia  
2 Drury --

3 MS. SASSOON: Correct.

4 THE COURT: -- or anything like that. You are just  
5 going to say the indictment charges -- maybe you won't even say  
6 that.

7 MS. SASSOON: I don't even know how much we are going  
8 to get into the law on individual charges, but as we describe  
9 the testimony and the evidence, we are certainly not going to  
10 be linking it directly to any particular statute or  
11 component --

12 THE COURT: Is there any reason why at this stage I  
13 need to -- I guess this is a question for you and Ms.  
14 Glashausser -- need to reach a decision about whether the  
15 videos should be received?

16 I haven't seen them, I don't know what they look like,  
17 and I don't know what the prejudicial impact is. On a 403  
18 analysis I probably should look at least what the stuff is  
19 before deciding whether to admit it or exclude it.

20 MS. SASSOON: One thing I should clarify --

21 THE COURT: I am not dying to look at it, but you  
22 know --

23 MS. SASSOON: Yes. One thing I omitted to mention is,  
24 although Felicia is going to testify about it, the agent --

25 THE COURT: This is going to come in through the

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1 agent, right?

2 MS. SASSOON: Yes. So we are going to seek to  
3 introduce a lot of items of evidence that came off devices in  
4 one fell swoop as opposed to individually.

5 So this was a separate issue I wanted to raise with  
6 the Court, but we would like to introduce basically all of our  
7 electronic evidence --

8 THE COURT: I can tell you what I am going to do with  
9 respect to that, which is that I think the defense has a point  
10 in saying that they've got a right to object to individual  
11 pieces of evidence individually, and I will rule on them  
12 individually.

13 So if there's no objection to the introduction of a  
14 bunch of material en masse, then that will be received.  
15 Otherwise we'll go through each different piece --

16 MS. SASSOON: Yes.

17 THE COURT: -- and I will rule with respect to them.  
18 And we can talk about process in terms of that.

19 MS. SASSOON: I just wanted to highlight a couple of  
20 things.

21 One is that the means and methods of the enterprise  
22 not only include that he -- not in these exact words, but  
23 sexually groomed his victims, but also that it was a means and  
24 methods to collect sensitive and humiliating materials of his  
25 victims, recordings, journal, videos. So the fact of the

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1 videos is independently probative of the means and methods of  
2 the enterprise separate and apart from the fact that this  
3 activity happened.

4 Once the defense is acknowledging that Felicia's  
5 testimony is admissible as direct proof of Count One of the  
6 indictment, the government is entitled to prove its case by the  
7 evidence necessary to prove up that case. So that constitutes  
8 Felicia's testimony, but it also constitutes the videos  
9 themselves that are direct proof of the means and methods of  
10 collecting videos of the victims.

11 I also anticipate that they will be cross-examining  
12 Felicia, and we should not be hamstrung from putting in  
13 evidence that directly corroborates her testimony that is  
14 direct proof of Count One.

15 THE COURT: Okay.

16 Anything more, Ms. Glashausser?

17 MS. GLASHAUSER: Nothing further, your Honor.

18 THE COURT: The parties should know that even if I  
19 ultimately decide to receive this evidence that at the Rule 29  
20 stage I may need some more help from the parties with respect  
21 to the legal issues having do with the forced labor statute.

22 All right.

23 The defense *in limine* motion No. 1 having to do with  
24 the sexual grooming of Isabella Pollok, I am not sure how much  
25 I need with respect to that, but I will hear briefly from the

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1 government and briefly from the defense.

2 MS. SASSOON: Yes, your Honor.

3 As set forth in our briefing, we intend to introduce  
4 limited evidence about this to establish the relationship  
5 between the defendant and his coconspirator, her role within  
6 the conspiracy and its connection to some of the means and  
7 methods of the enterprise and the execution of the forced labor  
8 and the sex trafficking.

9 Just to be clear about what we are not planning to  
10 introduce, we have this chart related to the sex videos of  
11 Felicia. There are countless videos depicting Isabella Pollok  
12 engaged in sexual activity that do not include any of the  
13 victims. We are not seeking to introduce those videos. We  
14 have no chart related to those videos. We are not playing  
15 those videos. But to the extent that this evidence is  
16 probative, as laid out in our brief, we do think it is  
17 admissible.

18 THE COURT: Ms. Glashausser.

19 MS. GLASHAUSSER: Thank you, your Honor.

20 The government shouldn't be allowed to use Ms. Pollok  
21 as both a coconspirator and a victim. That is what they're  
22 aiming to do here, or that's the effect of what they are  
23 planning to do here.

24 As the government defines the word grooming, they  
25 define it as the abuser's relationship with the victim or



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1 nonviolent techniques an offender uses to gain compliance of a  
2 victim. They shouldn't be allowed to introduce anything that  
3 they considered to be sexual grooming of Ms. Pollok.

4 Once they labeled Ms. Pollok as a coconspirator, it  
5 gives them certain -- it reduces the evidentiary hurdles they  
6 have to introduce statements by her. It makes it easier for  
7 them to introduce evidence about her. They shouldn't then be  
8 able to turn the coin and flip it on its head, which to say  
9 that she was just groomed, which really just serves as  
10 propensity evidence to paint Mr. Ray as a really bad person.  
11 That should be prohibited. It is not relevant to their case  
12 and is prejudicial.

13 THE COURT: Why isn't it relevant on the theory of  
14 explaining how she came to be trusted and also how she executed  
15 her activities on behalf of the enterprise in sex trafficking  
16 Ms. Drury? I mean, it's hard to eliminate sex from this case.

17 MS. GLASHAUSSER: It is not that hard, your Honor,  
18 because the sex trafficking charge is discrete. It relates to  
19 one person, Ms. Drury, when there are many other witnesses that  
20 the government plans to introduce as on other counts that do  
21 not relate to sex trafficking.

22 The bulk of what I understand the government is trying  
23 to introduce as Ms. Pollok's sexual quote-unquote grooming is  
24 not related to Drury's sex trafficking. They have information  
25 about Ms. Pollok having sex with Dan Levin, who is a peer of

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1 the same age, shortly after college, which is probative of  
2 really nothing.

3 They seek to introduce the evidence relating to  
4 Rosario, which I think really just goes with our first point.  
5 It depends on how your Honor rules on the other point with  
6 respect to that.

7 But with respect to the actual sex trafficking charge,  
8 I understand that the government is only saying that there is  
9 one or two instances well into the time period of the sex  
10 trafficking charge when Ms. Pollok and Ms. Drury had sex  
11 together.

12 That's well into while the sex trafficking charge is  
13 allegedly already happening. So I am not sure how that even  
14 amounts to grooming. But this evidence, the whole of it is, is  
15 seeking to paint Ms. Pollok as a victim while the government  
16 would still be allowed to use her as a coconspirator. That  
17 should not be allowed.

18 THE COURT: Ms. Sassoon, how are you going link up the  
19 conduct to any of the crimes that the indictment charges? This  
20 is not going to be a case about people engaged in sex and  
21 videotaping themselves engaged in sex. That is not a crime.

22 MS. SASSOON: I think we have been very mindful about  
23 that and made an effort to be thoughtful about how we can  
24 present this evidence in a --

25 THE COURT: Right. But tell me --

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1 MS. SASSOON: Yes.

2 THE COURT: How can you present it in a way that is  
3 least damaging but still proves up your case?

4 MS. SASSOON: Right.

5 THE COURT: Tell me how it proves up your case.

6 MS. SASSOON: Your Honor, I think we have to go back  
7 to the Felicia sexual services to explain to this to an extent.  
8 It's Isabella who is the defendant's lieutenant in many things.  
9 It is Isabella who is sent out of the house to film Felicia on  
10 behalf of the defendant. It's Isabella who's recording  
11 confessions.

12 She is also the person recording the forced sexual  
13 services. It's Isabella who's sent to collect the proceeds of  
14 Claudia's sex trafficking, and she was also directed by the  
15 defendant to engaged in sexual activity with Claudia, which, as  
16 our expert will testify, is part of the overall process that  
17 the defendant engaged in to desensitize his victims and also to  
18 cut them off from other friends, other family, from typical  
19 everyday interactions with the everyday world.

20 There's that piece of it. And then there's the piece,  
21 as your Honor noted, it is necessary to understand how this  
22 college sophomore came to play this particular role in the  
23 enterprise, including in perpetuating the sex trafficking,  
24 being the person who's the enforcer for the enterprise. It's  
25 very difficult to understand that if you don't understand how

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1 her relationship with the defendant evolved in the early days.  
2 This is not attempting to have it both ways, treating her as a  
3 victim and as a coconspirator.

4 I think a useful analogy is to many of the gang cases  
5 I've prosecuted, where you have the leader of the gang and then  
6 you often have individuals who are selling drugs on the street  
7 corner committing shootings on behalf of the gang leaders with  
8 very little financial gain, very little benefit to themselves,  
9 but they have been in this environment where they've suffered  
10 assaults, where they have suffered beatings, where they've  
11 suffered intimidation by the group. That doesn't mean they are  
12 a coconspirator. It helps explain the hierarchy and the  
13 relationships within the particular conspiracy.

14 THE COURT: I understand that point.

15 Tie again this testimony to the sex trafficking with  
16 respect to Claudia Drury.

17 MS. SASSOON: Yes.

18 So Claudia will testify that during the period of the  
19 sex trafficking there were several occasions where the  
20 defendant and Isabella came to her hotel room, and the  
21 defendant directed Isabella to engage in sexual activity with  
22 Claudia. This testimony is going to be very limited. But it  
23 is our view that coercive and desensitizing activities that  
24 took place over the course of the sex trafficking can still  
25 constitute the continuation of the grooming and humiliation

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1 desensitization process.

2 It is also probable that the jury could conclude that  
3 Claudia was not being sex trafficked in 2015 when she started  
4 escorting because she was being sex trafficked beginning in  
5 2016 once the conditions became more coercive, or 2018 when she  
6 had a plastic bag put over her head.

7 I think the *Marcus* case is illustrative of this, where  
8 the Court said even if the victim at first was willingly  
9 engaging in certain BDSM activity, there was a tipping point  
10 where it became more coercive and forced. I think to the  
11 extent that certain things are happening along the timeline of  
12 the sex trafficking, the fact that it didn't necessarily happen  
13 before is not dispositive.

14 THE COURT: Let's go to No. 3, the state of mind  
15 evidence.

16 Ms. Sassoon, are you arguing this one also?

17 MS. SASSOON: Yes.

18 THE COURT: All right. I will hear from you and then  
19 I will hear from the defense.

20 My basic question is why isn't all of this evidence  
21 squarely probative of Mr. Ray's belief at the time of the  
22 substance of what's contained in those letters?

23 As I understand the defense, it is not offering the  
24 letters for the truth of what's reported in the letters, but  
25 for the fact that Mr. Ray believed it, because why else would

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1 he have written to the U.S. Attorney and to the DA's office  
2 relaying that information?

3 Ms. Glashausser, I take it that is your theory?

4 MS. GLASHAUSSER: Correct, your Honor.

5 THE COURT: Ms. Sassoon.

6 MS. SASSOON: Yes.

7 So there are a few questions embedded in what your  
8 Honor said, and I can take them out of order.

9 Why else would he do it?

10 There are plenty of reasons, and I think the proof at  
11 trial is going to show that throughout the time frame of the  
12 conspiracy the defendant was deliberately obfuscating,  
13 deliberately sending his victims to say things to law  
14 enforcement or to write confessions or to make these recorded  
15 confessions with false information to throw people off his  
16 trail, to protect himself. So, why else? That's the why else.

17 And Judge McMahon noted that in a case raising a  
18 similar issue that the idea that this is necessarily is proof  
19 of an innocent state of mind is logically fallacious.

20 THE COURT: The cases that you cite are arising in  
21 different contexts. The cases that you cite are cases where,  
22 after the crime is committed, the defendant says that he wants  
23 to cooperate or works with law enforcement. In that context  
24 courts exclude the evidence really on the theory that it is  
25 not, to the extent that it is probative of a contemporaneous

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1 state of mind, that contemporaneous state of mind, I'm not  
2 guilty of what I did in the past, is tantamount to testifying.  
3 It is not relevant to the contemporaneous state of mind at the  
4 time of the crimes.

5 MS. SASSOON: Respectfully, your Honor, we think that  
6 that's exactly what these exhibits are. A letter sent in 2016  
7 saying I was poisoned is not contemporaneous with the time  
8 period of the alleged poisoning, the force that was going on at  
9 the time of those confessions.

10 This letter is setting out, look back a year to when I  
11 was assaulted in 2015 a. Bunch of people have confessed that  
12 they are responsible for that. Look back to this time period  
13 in 2013 when I was in North Carolina and everybody was  
14 poisoning me. The attachment are confessions related to the  
15 time period earlier in the charged conspiracy.

16 THE COURT: Ms. Sassoon, I don't know exactly what the  
17 defense is going to be. I don't know exactly what you are  
18 going to argue. But the indictment does charge that the  
19 confessions were garnered as a means and method of the  
20 enterprise in order ultimately to obtain things of value, to  
21 extort the victims, to force them to engage in labor and sex  
22 trafficking.

23 Isn't this evidence consistent of a different and more  
24 benign theory, which is that those confessions were gathered  
25 because Mr. Ray at the time he was gathering the confessions

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1 believed that what the people said had happened did happen and  
2 that he was wanting them to be prosecuted?

3 MS. SASSOON: Then I think the appropriate state of  
4 mind evidence is the recorded confessions themselves, where in  
5 the moment he's saying to the victim, Didn't you use mercury to  
6 poison me? Didn't you use cyanide? Perhaps that reflects his  
7 belief in that moment in conversation with a victim.

8 His selective sharing of information years or months  
9 after the supposed incident is not contemporaneous, even if it  
10 falls within the overall time frame of the conspiracy. I think  
11 we have to take a narrower view of what it means to be  
12 contemporaneous with the event.

13 If you look at the letter that is actually written by  
14 Mr. Ray, he's describing things that have happened in the past  
15 and his beliefs about the past. If we opened up the hearsay  
16 exception to include that, then it would basically swallow the  
17 rule.

18 Anything a defendant said prior to being arrested, if  
19 it's self-exculpatory, would come in, and that's not the rule  
20 and that's not how the cases have interpreted the rule. And  
21 that doesn't even get to the issue, which is many of the  
22 exhibits that the defense is proposing are not the defendant's  
23 own statements.

24 THE COURT: No. The letter to Preet Bharara is the  
25 defendant's statement. I thought the communications with the



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1 DA's office and with the EPA, the underlying information is not  
2 his statements, but the act of conveying that are his  
3 statement, correct?

4 MS. SASSOON: So, sending an e-mail to Robert Mutto at  
5 the EPA, that is the defendant's statement. But the attachment  
6 is its own hearsay statement. So it would be inappropriate to  
7 admit that underlying statement, and without it the fact of  
8 sending an e-mail to the EPA is contentless.

9 THE COURT: How do you explain why the rule makers in  
10 803(3) actually drafted a provision that said that a statement  
11 of memory or belief is not admissible to prove the fact  
12 remembered or believed unless it relates to the validity or  
13 terms of the declarant's will unless the rule makers  
14 contemplated that statements of memory or belief could under  
15 some circumstances be admissible not for the underlying fact  
16 but for the fact of the memory or belief.

17 MS. SASSOON: My recollection of the rule, and I don't  
18 have the language in front of me -- give me a moment, your  
19 Honor.

20 So the rule says then existing state of mind, but not  
21 including a statement of memory or belief to prove the fact  
22 remembered or believed unless it relates to the validity of the  
23 declarant's will.

24 I think here there is a risk, first of all, that  
25 sharing the evidence of his memory or belief without him

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1     testifying risks confusing the jury about it being offered for  
2     the truth of the matter. But I think all the cases on this  
3     rule say that it has to be a belief contemporaneous with what  
4     is taking place.

5             If you look at this letter to Preet Bharara, which is  
6     the only exhibit that has any statement from the defendant  
7     about his state of mind, he's describing an assault that took  
8     place in 2015; a trial that took place months before.

9             The letter is dated April 23, 2016. We don't know  
10    that it is actually sent. There is no evidence in this case of  
11    the receipt of that letter by the U.S. Attorney's Office. But  
12    he's describing an assault, September 17, 2015. They are in a  
13    poisoning conspiracy involving all of these people. There is  
14    no indication that this belief is contemporaneous with anything  
15    that's occurring in that moment.

16            This is a classic instance of someone after the fact  
17    drafting something to give their gloss on events in a very  
18    self-serving way. The defendant is not attaching here the  
19    videos of his abuse or a full picture of what's going on. He's  
20    writing an after-the-fact self-serving statement which perhaps  
21    isn't after his arrest in the case but it is akin to somebody  
22    coming after the fact, after their conduct and saying here's my  
23    self-serving, benign explanation for what transpired.

24            THE COURT: Let me hear from the defense.

25            MS. GLASHAUSSER: Thank you, your Honor.

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1 All of these statements are not being admitted for the  
2 truth of what is in the documents. So we are not trying to  
3 prove what is written there. They are solely being introduced  
4 for Mr. Ray's state of mind, his state of mind when he sent  
5 those that he thought that was information that was relevant to  
6 his belief that he was poisoned and targeted. The target of a  
7 conspiracy is both relevant and admissible. It's  
8 contemporaneous, it's showing his state of mind at the time, it  
9 is during the ongoing criminal conduct, and it is directly  
10 responsive to the government's theory of the case.

11 THE COURT: All right. I understand.

12 Next is the government's *in limine* motion regarding  
13 the coconspirator statements of the defendant's father.

14 Ms. Sassoon, are you on the firing line on all of  
15 these?

16 MS. SASSOON: Ms. Bracewell will be addressing the tax  
17 issues. I will try to be brief.

18 THE COURT: Maybe I should just frame my question for  
19 you, which is -- you can stand if you want -- but the  
20 defendant's father's conduct is bad conduct. The defendant's  
21 father would have had a lot of reason, you know, not lawful  
22 reasons to make the kinds of threats that he made, and I accept  
23 your notion and it's plainly right that the threat is not  
24 hearsay. It is not being admitted for the truth of the matter.

25 But how do you pin the defendant with that conduct? I

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1 mean, it's his son, and his son is facing serious charges where  
2 he could go away for a long time. Maybe they believe, and  
3 maybe they're right, that the testimony is made up.

4 So how do you tie it back to Mr. Ray?

5 MS. SASSOON: So --

6 THE COURT: Excuse me for a second.

7 Mr. Ray, are you able to hear. I noticed you put your  
8 hand by your ear.

9 THE DEFENDANT: Yes, it helps. Thank you.

10 MS. SASSOON: I think, your Honor, that is an argument  
11 that goes to the weight of the evidence, not to its  
12 admissibility. The defense has not disputed that this  
13 constitutes a nonhearsay threat and therefore should be  
14 admissible as long as it has some probative value under Rule  
15 401, which is a pretty low threshold.

16 Given that we are going to introduce calls between the  
17 defendant and his father where they are discussing his defense,  
18 gathering incriminating material against the victims to  
19 discredit them, the fact that during these jail calls Felicia  
20 will testify that she and Isabella were present so that they  
21 could hear what the defendant was saying even though he was not  
22 allowed to contact them directly.

23 So there is the context of them being together as a  
24 group listening to these calls, the father repeatedly conveyed  
25 messages of ongoing loyalty, and then it was when Felicia moved

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1 and separated herself from the father and from Isabella that  
2 she received this threat. Obviously it is circumstantial to  
3 infer that this is coming from the defendant, but that is an  
4 argument that goes to the weight of the evidence, not to its  
5 admissibility, your Honor.

6 THE COURT: Ms. Glashausser.

7 MS. GLASHAUSSER: Your Honor, unless you have  
8 questions, I don't have anything to add on that point. I think  
9 your Honor understands our argument.

10 THE COURT: No, it would be helpful to hear your  
11 response to Ms. Sassoon, because in her brief, Ms. Sassoon just  
12 mentioned a couple of conversations from June and then -- my  
13 recollection is it's June and then the threat is in October.  
14 Now she's embellished it a little bit or added to the proffer.

15 MS. GLASHAUSSER: I don't believe that there is  
16 anything more concrete than what the government has written in  
17 their brief in relationship to the calls, the relationship  
18 between the calls and whatever the defendant, Mr. Ray's father  
19 says in October.

20 It is just not factually true that Mr. Ray, at least  
21 as far as we know, wasn't allowed to contact Ms. Pollok or  
22 Felicia Rosario directly. There was no ban on his calls in any  
23 sort of way. So I think your Honor is right in pointing out  
24 that there is no clear connection between what Mr. Ray's father  
25 allegedly says to Rosario and anything that Mr. Ray has said on

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1 the phone calls.

2 If I may, your Honor, though, I have one additional  
3 thing to mention about the previous argument that I just want  
4 to make sure was not missed because I didn't start with that  
5 portion.

6 Because we did find some additional cases relating to  
7 admitting not Mr. Ray's letter but also the EPA letters  
8 relating to when somebody expressly adopts somebody else's  
9 statement, your Honor. If your Honor is already familiar --

10 THE COURT: You can give me the citations.

11 MS. GLASHAUSSER: Sure. There is a Second Circuit  
12 case, *United States v. Kadir*, 718 F.3d 115, that's from 2013,  
13 explaining that statements would have been admissible if  
14 Mr. Kadir could have shown that he had adopted the other  
15 person's statements, which in this case by Mr. Ray's sending  
16 the e-mail he indicated that he adopted that statements and it  
17 reflected his state of mind.

18 Additionally, with respect to the EPA e-mail that  
19 Mr. Ray received from the EPA, that's also admissible to show  
20 its effect on Mr. Ray. It is actually quite similar to how the  
21 government plans to use other e-mails that Mr. Ray received to  
22 show their effect on him. So that also would be admissible.

23 So I just wanted to make sure that I didn't leave  
24 those out. I have a few district court cites with respect to  
25 admitting the effect on the person receiving the e-mail, but I

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1 am not sure if the government disputes that, because it seems  
2 to be their theory of admissibility for other e-mails as well.

3 MS. SASSOON: So we do dispute that for two reasons:

4 One, I think the prejudice here is particularly acute  
5 because the defendant sent very limited information to this law  
6 enforcement officer and to his lawyer and to the U.S.  
7 Attorney's Office and then wants to cloak himself in the  
8 approval of these people. Oh, look, Robert Mutto of the EPA  
9 said that I was a victim. Therefore, it was reasonable for me  
10 to think that I was a victim. Look, my lawyer Glen Ripa is  
11 writing a letter on my behalf. Therefore, because I had a  
12 lawyer who was sympathetic to my cause, it was reasonable for  
13 me to do what I did.

14 Given that that implicates the advice-of-counsel  
15 defense in particular, I think it's particularly problematic  
16 here to admit that and permit that misleading impression to be  
17 given to the jury without any idea of what led Glen Ripa to  
18 write that letter, what led Robert Mutto to write that e-mail,  
19 what other information he had apart from a couple of e-mails  
20 sent to him by the defendant to reach that conclusion.

21 We also don't know the effect on the listener because  
22 we don't have the defendant's responses to those e-mails,  
23 whereas with the evidence we are seeking to introduce, that the  
24 defendant received these e-mails, we are then also putting in  
25 proof of his subsequent actions, and they are explained by the

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1 fact that he had this knowledge or he had this information from  
2 the person who had said these things.

3 THE COURT: Ms. Glashausser, why, if you are offering  
4 a letter that was sent by Mr. Ray's lawyer, that's what I  
5 understand the issue to be, why --

6 Is that right, Ms. Sassoon? This letter --

7 MS. SASSOON: Yes. Exhibit H contains several letters  
8 from Glen Ripa, supposedly written by Glen Ripa.

9 THE COURT: Why, if you're offering the underlying  
10 letters purportedly from Mr. Ripa, wouldn't that result in a  
11 waiver of the privilege?

12 MS. GLASHAUSSER: Well, your Honor, the underlying  
13 letters are -- those particular letters were attached, Mr. Ray  
14 attached them to the letter that he sent himself. So he  
15 adopted those statements and sent that along to the U.S.  
16 Attorney's Office, and he did that after having sent the  
17 information to the EPA and having been rebuffed by the EPA.

18 The letters themselves, to address your Honor's  
19 privilege question, the letters from Mr. Ripa are not  
20 themselves privileged information. They were letters that were  
21 sent to the U.S. Attorney's Office previously that Mr. Ray is  
22 then attaching.

23 So this does not address a privilege issue. It's a  
24 hearsay issue, and it is an exception to -- it is not hearsay  
25 if a statement is admitted to establish the recipient's state



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1 of mind as a result of receiving the communication. I have two  
2 examples of district court cases for that proposition, *United*  
3 *States v. Thurman*, 915 F.Supp.2d 836. That is a Western  
4 District of Kentucky case as well as *Velez v. QVC*, 227  
5 F.Supp.2d 324. I apologize. I didn't write the district that  
6 that came from. Both of them explain that if you are trying to  
7 introduce the statement to show the state of mind of the  
8 recipient, not for the truth, then that is not hearsay.

9 Again, the government is planning to use this very  
10 theory of admissibility for other e-mails that Mr. Ray received  
11 in the presentation of their case.

12 MS. SASSOON: I do think this implicates the  
13 privilege, your Honor, because to the extent that he is relying  
14 on a letter from Glen Ripa to say this gave me an innocent  
15 state of mind, it's relevant what information Glen Ripa was  
16 relying on to generate this letter.

17 THE COURT: Let's ask the defense -- I am not sure I  
18 need to resolve this particular issue now -- but are you  
19 planning to suggest to the jury that there's some significance  
20 to the fact that the letter comes from counsel or that --

21 MS. GLASHAUSSE: No, your Honor. Not unless we do  
22 raise the advice-of-counsel defense, which would be a totally  
23 separate defense.

24 So, no, we would not be suggesting that to the jury  
25 based on these letters. These letters are merely to show

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1 Mr. Ray's belief that he had been poisoned and was a target of  
2 the conspiracy.

3 MS. SASSOON: Your Honor, can I say one more thing?

4 THE COURT: No, Ms. Sassoon. I need to move on.

5 Let's go to No. 5, the prior incarceration and the New  
6 York Magazine article. I think you have given me some exhibits  
7 with respect to the New York Magazine article. So just walk me  
8 through how all of fits together.

9 MS. SASSOON: Yes, your Honor. I submitted the  
10 exhibits to help illustrate what exactly it is we are talking  
11 about here.

12 So if you start with Government Exhibit 3002 and  
13 Government Exhibit 3103, these are two e-mails written by  
14 Claudia Drury to a number of recipients, including the dean of  
15 Sarah Lawrence College for the first e-mail and to the  
16 defendant for both e-mails.

17 In these e-mail she describes, for example -- and  
18 these are lengthy, so I will just quote. This is the second  
19 paragraph of 302: "Talia Ray's father, Larry Ray, was  
20 imprisoned unjustly for three years for interfering with the  
21 transfer of child custody. He got out of jail on September 21,  
22 2010."

23 This is the next exhibit, toward the bottom of the  
24 first page, "When I met Larry he had just been released from  
25 prison and reunited with Talia."

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1           The bottom of the next page, "He did all these things  
2           for us even if it threatened to put him back in jail."

3           This is just to give an example of how the victims'  
4           understanding that the defendant had been unjustly imprisoned  
5           is interwoven in the evidence at trial, which will also include  
6           testimony from the victims that as part of this narrative  
7           coming from the defendant and his daughter that he was unjustly  
8           imprisoned, he would talk about how he had been targeted by  
9           Bernard Kerik by Frank DiTommaso and other individuals who were  
10          out to get him and who were responsible for him being in prison  
11          in the first place. And these are the same names that then  
12          reappear in the confessions that come from the victims.

13          For example, many of the victims on the recordings and  
14          in their e-mails confess to things like plotting to poison the  
15          defendant at the direction of Bernard Kerik and Frank  
16          DiTommaso.

17          So we are not offering it for the truth of the matter,  
18          but I think it's necessary to understand the evolution of the  
19          victim's confession, their understanding of the defendant when  
20          they first met him, and his arrival on campus as this mythic  
21          figure who been unjustly imprisoned at the hands of these  
22          various public figures.

23          So that is the way we intend to introduce that  
24          information at trial. To the extent it is admitted, we would  
25          be comfortable with a limiting instruction saying it is not

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1 being offered for the truth of the matter but to explain the  
2 victim's understanding at the time and the source of their  
3 confessions.

4 THE COURT: Okay. And explain how New York Magazine  
5 fits into this.

6 MS. SASSOON: Yes.

7 So we do not intend to offer the article itself into  
8 evidence, but the fact that there was a reporter at New York  
9 Magazine writing about the defendant is necessary to explain  
10 some of the subsequent actions of the conspiracy.

11 So, for example, Government Exhibit 3225 the defendant  
12 gets an e-mail from the reporter at New York Magazine, he  
13 immediately forwards it to the two central coconspirators of  
14 the racketeering enterprise, his daughter and Isabella Pollok.  
15 Then that prompts the coconspirators to engage in some  
16 subsequent activity, including gathering incriminating material  
17 against the victim as a bulwark against this article.

18 So Government Exhibit 3228, several days later  
19 Isabella Pollok is sending Larry Ray journal confessions of  
20 Claudia Drury that were made years before, but that are being  
21 circulated for the purpose of defending this article.

22 Skip ahead to Government Exhibit 3235. This is Larry  
23 Ray sending to the New York Magazine reporter incriminating  
24 information shared with him by Santos Rosario four years  
25 before.

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1           And then if you look at the last exhibit, 3244, this  
2           is a threatening e-mail sent by Isabella Pollok to Claudia  
3           several months later, threatening her and saying, among other  
4           things: It's clear to us that you are the perpetrator of this  
5           article. You belong in prison. You are a criminal.

6           So we are not seeking to introduce the content. We  
7           certainly think it would be appropriate to give the jury a  
8           limiting instruction that they should not independently look  
9           for this article, but we do think it's necessary to explain the  
10          events that took place in the spring of 2019.

11          THE COURT: A couple of questions for you.

12          First of all, with respect to the jury, if that was  
13          the only issue, is there any reason why you need to have in  
14          evidence the magazine, the title of the article, the name of  
15          the author?

16          MS. SASSOON: No. As long --

17          THE COURT: The name of the author may be in the  
18          e-mails.

19          MS. SASSOON: As long as there is a clear way to  
20          convey the connection between the e-mail from James Walsh in  
21          New York Magazine to the threat against Claudia several months  
22          later related to the same magazine, no.

23          THE COURT: And I guess the e-mails do refer to  
24          nymag.com. So it's going to be a challenge but you may be able  
25          to figure it out. Explain to me again -- I understand now how

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1 it fits into the story.

2 MS. SASSOON: I think it's --

3 THE COURT: Isn't this sort of at the tail end of the  
4 activities of the enterprise, and how is this in furtherance of  
5 the activities of the legal, the illegal activities of the  
6 enterprise?

7 MS. SASSOON: So it shows in practice, illustrates one  
8 of our theories of obstruction. So, for example, we are  
9 introducing jail calls where the defendant talks about  
10 gathering incriminating information about the victims to  
11 discredit them for trial.

12 The defendant is gathering all these recordings  
13 throughout the time frame of the conspiracy, and part of the  
14 question is, to what end? This is a prime example of how when  
15 he's kind of under scrutiny this is when they wield all of that  
16 material they have been collecting against the victims to  
17 obstruct justice and to obfuscate what's really going on with  
18 the defendant's criminal activity.

19 THE COURT: At this point in time are you going to  
20 offer evidence that he has some belief that there is an  
21 investigation of him by law enforcement going on?

22 MS. SASSOON: My understanding of the obstruction of  
23 justice statute is that you don't have to show that that there  
24 is an active investigation but that the defendant could be  
25 engaging in this activity in anticipation of an investigation.

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1 And it's certainly reasonable to say if there is an article  
2 exposing his activity that is going to lead to an  
3 investigation. In fact, that's exactly what happened in case.

4 At the time of the New York Magazine article, the  
5 defendant also reengages with one of the victims, Santos,  
6 enlists him to right comments on the article praising the  
7 defendant, and at that point Santos starts sending money to the  
8 defendant again, which we will argue is further extortion  
9 proceeds.

10 THE COURT: Say that again.

11 MS. SASSOON: Yes.

12 So one of the victims is Santos, who provided the  
13 defendant tens of thousands of dollars early on in the  
14 conspiracy. Then there is a lull where the defendant is  
15 focused on the sex trafficking.

16 This article is published, the defendant reinitiates  
17 contact with Santos, enlists him to write comments on the  
18 article in the defendant's favor and also starts collecting  
19 money from Santos again, which we will argue are extortion  
20 proceeds.

21 THE COURT: Okay. Do you have handy the case citation  
22 for the proposition that you just need to anticipate that there  
23 will be --

24 MS. SASSOON: I can provide that to the Court. And I  
25 am speaking from memory. I may be --

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1           THE COURT: No need for you to provide it. In fact, I  
2 don't want you to provide it unless you think there's some  
3 reason we can't find it on our own. But I understand the -- I  
4 think I understand the theory now.

5           Is there any other basis of the relevance of the New  
6 York Magazine story?

7           MS. SASSOON: No, your Honor.

8           THE COURT: I say that Ms. Sassoon with all due  
9 respect to the wonderful writings I've gotten from you and from  
10 the defense. They have been very helpful. But there is a time  
11 also where the Court just needs to do the work itself.

12          Ms. Glashausser, do you want to address these?

13          MS. GLASHAUSSER: Thank you, your Honor.

14          Yes, your Honor.

15          Starting first with Mr. Ray's prior incarceration,  
16 that is not relevant to the government's case and is  
17 exceedingly prejudicial. Just as the government presented  
18 these e-mails to the Court, just because Drury used clauses  
19 referencing Mr. Ray being in prison is not a reason to admit  
20 it. These can simply be redacted, and they should be.

21          There's not any dispute that Mr. Ray went to Sarah  
22 Lawrence College in the fall of 2010, that he hadn't seen his  
23 daughter for a long time, that he was excited to see her.  
24 There is also no dispute that he believed that he was the  
25 subject of a conspiracy relating to Bernard Kerik. All of



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1 those facts can come in.

2 THE COURT: Doesn't, though, the fact of the  
3 imprisonment sort of tend to make more credible the witnesses'  
4 testimony about what Mr. Ray was saying and the impact on them?  
5 That it was not just a fight with Mr. Kerik, but a fight that  
6 had the grave consequences of sending Mr. Ray to prison?

7 MS. GLASHAUSSE: No, your Honor.

8 I think first there is a bit of factual fuzziness  
9 here, because the genesis of the fight with Bernard Kerik is  
10 not the incarceration that the government is trying to admit.  
11 So that incarceration happened in the late -- Mr. Ray was  
12 incarcerated in the late '90s, early 2000s. That's where the  
13 dispute with Mr. Kerik originated.

14 The easier way to start the dispute, just for our  
15 purposes to exclude prior incarceration, is with Mr. Ray  
16 preventing effectively Bernard Kerik from being made Homeland  
17 Security secretary.

18 That is the place where the dispute really, really  
19 takes off. That is a nonprejudicial spot to explain the  
20 conspiracy plot. It does not need reference to prison. That  
21 Mr. Ray was incarcerated on a separate offense right before he  
22 went to Sarah Lawrence College is simply not relevant, and it's  
23 not related to the Kerik dispute.

24 THE COURT: Ms. Glashausser, let me ask Ms. Sassoon a  
25 question as I look at Government Exhibit 3002 closely. It

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1 refers to Mr. Ray being imprisoned unjustly for three years for  
2 interfering with the transfer of a child's custody.

3 MS. SASSOON: Yes.

4 THE COURT: Isn't there something quite powerful to  
5 the defense's point that that is pretty prejudicial and doesn't  
6 tie it to Mr. Kerik?

7 MS. SASSOON: So it does in the sense that, yes, the  
8 defendant's disagreement or falling out with Bernard Kerik  
9 began with his cooperation, but that is not what was  
10 transmitted to the victims. What they were told in  
11 anticipation of the defendant's arrival on campus was that he  
12 had cooperated -- I don't even know if they were told about  
13 this cooperation. What's salient in their mind is that he at  
14 that point was imprisoned because Bernard Kerik targeted him  
15 unfairly and had a vendetta against him. I don't know that  
16 that's true. And the defendant was imprisoned for this child  
17 custody matter, but that was the understanding of the victims.

18 I think it would be appropriate to redact, for  
19 example, for interfering with the transfer of child custody or  
20 language referencing specifically why he might have been in  
21 prison. But the victims' understanding was that he was coming  
22 out of prison because of something that Bernard Kerik and a few  
23 others had done against him.

24 And this resurfaces again in 2015. This letter we  
25 were just talking about that the defendant supposedly sent to

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1 the U.S. Attorney's Office references an assault by Frank  
2 DiTommaso against the defendant in 2015. This ties in again to  
3 the defendant's involvement in these legal disputes with  
4 Bernard Kerik and Frank DiTommaso. And if that is not  
5 elicited, it is going to be very difficult for the jury to  
6 understand why Frank DiTommaso comes up to the defendant at a  
7 hotel in 2015 and punches him in the face on video.

8 THE COURT: Is there any documentary evidence that the  
9 alleged victims were told that Mr. Ray was in prison as a  
10 result of something having do with Mr. Kerik, because the 2011  
11 e-mail that you gave me as 3002 just talks about transfer of  
12 child custody?

13 MS. SASSOON: I believe so. I don't know that it's  
14 reflected -- yes. So if you look at 3103, the second full  
15 paragraph right in the middle, so this does confirm what the  
16 defense said about the exposure of Bernard Kerik as homeland  
17 security adviser. But it says, "One day I met my housemate  
18 Talia's dad, Larry Ray. He had just gotten out of prison. He  
19 is the man who exposed Bernard Kerik as corrupt. Because of  
20 this he was prosecuted by their own government in an effort to  
21 prevent Larry from exposing Kerik. At the same time he was in  
22 the process of exposing him, he was also getting divorced from  
23 his wife," and on and on.

24 THE COURT: Ms. Glashausser, I am going to turn to you  
25 in a second.

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1 MS. SASSOON: This was part of a broader narrative.

2 THE COURT: I get it, Ms. Sassoon. Just give me a  
3 moment.

4 Ms. Glashausser?

5 MS. GLASHAUSSER: Yes, your Honor.

6 All of these references to prior incarceration can  
7 simply be redacted because they're overly prejudicial and not  
8 necessary to the government's narrative.

9 When there is other evidence that is probative of the  
10 same topic, the Court should not allow the more prejudicial  
11 evidence instead of the less prejudicial evidence. That is  
12 something that the Second Circuit -- I believe we cited these  
13 in our brief, but says regularly, for example, in *Curley* and  
14 *McCallum*.

15 Here the fact of his incarceration is only -- as your  
16 Honor started to see, it is complicated, and tangentially at  
17 most related to the government's theory of the case. Redacting  
18 it would have no impact on the government being able to present  
19 evidence relating to Mr. Ray's belief in the conspiracy theory.

20 Obviously, we do not dispute that evidence and that it  
21 is admissible. But imprisonment is a specific thing that the  
22 Court needs to take and consider differently. For example, the  
23 evidentiary rules contemplate that prior incarceration that's  
24 more than ten years old is even less probative and more  
25 prejudicial. Evidentiary rule 609(b) isn't directly relevant

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1 to what we are talking about right now because it's for  
2 impeachment, but I think it's relevant in spirit that for  
3 incarceration that is that old, the probative value has to  
4 substantially outweigh the prejudice before you it can be  
5 admitted. Here that's just not so.

6 THE COURT: OK. All right.

7 I've got the argument.

8 MS. SASSOON: Your Honor, can I just note one thing  
9 about these exhibits?

10 THE COURT: Yes.

11 MS. SASSOON: So these were offered to your Honor just  
12 to show how that was the victims' understanding of the  
13 defendant when they first met him. But there are countless  
14 exhibits that we intend to introduce where this plot led by  
15 Bernard Kerik is part and parcel of the victims' confessions  
16 and explanation of their conduct.

17 So it would be very difficult to segregate that from  
18 our evidence. And this is information the defendant injected  
19 into his relationship with the victims. It is not something we  
20 are trying to introduce extrinsic of that.

21 THE COURT: Ms. Glashausser, you can respond to that,  
22 but also the New York Magazine article.

23 MS. GLASHAUSSER: Thank you, your Honor.

24 First, briefly to respond to that, we are not talking  
25 about the plot related to Bernard Kerik as something that

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1 should be excluded, merely the prior incarceration and the fact  
2 that Mr. Ray had just been released from prison when he came to  
3 Sarah Lawrence College, which is not related to the plot, the  
4 Bernard Kerik conspiracy.

5 Turning to the article, it is simply irrelevant. The  
6 fact that a magazine wrote an article about Mr. Ray and these  
7 other people is not relevant to the proof in the government's  
8 case.

9 The government is saying today that it's related to  
10 obstruction, but there's no evidence here that Mr. Ray is  
11 trying to obstruct justice. It is normal, if the news writes  
12 an article about you, to engage with them and to want to make  
13 sure that it is accurate. That is not evidence of obstructing  
14 an investigation that had not started at that point.

15 Mr. Ray in fact voluntarily participated in the  
16 article as quoted in the article. There's just no indication  
17 that he was obstructing even the journalist's process of  
18 writing the article, no less justice.

19 It's not relevant for that, and it's not otherwise  
20 relevant. It's simply prejudicial, not least of which because  
21 the jurors will sort of be invited to look up this article once  
22 they start hearing testimony that the government believes this  
23 is central to the case. That would be something that should be  
24 avoided at all costs. That would be exceedingly prejudicial  
25 even if the jury just learned the name of the article itself.

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1 THE COURT: Give me one moment.

2 Ms. Sassoon, where does the obstruction of justice  
3 appear in the indictment?

4 MS. SASSOON: Predicate acts of the racketeering  
5 enterprise in Count One.

6 THE COURT: Do you want to give me a paragraph number?

7 MS. SASSOON: I'm working on it, your Honor.

8 THE COURT: I see it. It's 8I.

9 Okay. I've got it.

10 All right.

11 The similar acts evidence regarding the defendant's  
12 ex-wife and two ex-girlfriends. I think this is the first I  
13 have heard of it in the defense reply to the *in limine* motions.

14 Tell me about that, Ms. Sassoon and whether you are  
15 gilding the lily with respect to that.

16 MS. SASSOON: Yes.

17 Our enterprise letter on page 11 described violence  
18 against three women. The third woman described, whose first  
19 name is Nacine, we do not intend to introduce that evidence.

20 With respect to the other two women, I think it  
21 depends a little bit on cross-examination, but I do think that  
22 this is probative of the defendant's modus operandi of sexual  
23 degradation of women in the service of the racketeering  
24 conspiracy here.

25 So, for example, Claudia is going to testify that in

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1 the Gregory Hotel, when she was assaulted, he put a plastic bag  
2 over her head and also smothered her with a pillow. We will  
3 have victims testify about being choked.

4 This is part of his process of sexual degradation and  
5 humiliation, and it is his pattern. To the extent that  
6 Claudia's credibility on this is challenged or she's accused of  
7 fabricating this episode, we think that this is admissible as  
8 404(b) evidence.

9 THE COURT: You are not planning to open on it,  
10 correct?

11 MS. SASSOON: No.

12 THE COURT: Ms. Glashausser, is there any reason why I  
13 can't wait on until I get letters from the government and from  
14 you and the government intends to offer it, expresses an intent  
15 to offer it?

16 MS. GLASHAUSSER: No, your Honor. Although the  
17 government has expressed intent to offer it in their enterprise  
18 letter, which is why we wrote to the Court about it.

19 THE COURT: I understand why you brought it to my  
20 attention. I appreciate you bringing to it my attention. It's  
21 very, very helpful.

22 I'm just trying -- you've presented me with a lot of  
23 issues, and I'm prepared to rule on as many on the ones that  
24 you need rulings on. It strikes me that this one is better  
25 addressed when and if the government now says they intend to



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1 offer it. They said in the letter that they were going to  
2 offer it. Now they are saying to me it depends on  
3 cross-examination.

4 MS. GLASHAUSSE: I guess from our perspective these  
5 women are also on their witness list, and just as a practical  
6 matter it would be difficult for us to sort of brief the issue  
7 mid trial, and we are prepared to argue it now, but if your  
8 Honor wished to defer ruling --

9 THE COURT: Well, I will hear the argument.

10 MS. GLASHAUSSE: Okay.

11 The situations with these other two women are not  
12 similar to what the government is alleging here. One of the  
13 people is Mr. Ray's ex-wife. He met her in 1981. They were  
14 then married for a number of decades. They had a very  
15 complicated relationship, as your Honor knows, that eventually  
16 involved a large custody dispute.

17 Introducing her testimony would derail the case. It  
18 would just open up a whole other trial within a trial about  
19 these other issues that really have nothing do with this case.  
20 There's no allegation that there was some sort of ongoing  
21 organization that Mr. Ray was running in relationship to his  
22 ex-wife. She was not a particularly vulnerable person. And  
23 there's no sort of criminal charges like sex trafficking  
24 extortion, money laundering. They are just not the same at  
25 all.

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1           Those things are also true about the other woman,  
2           which it seems to be there is one allegation of violence within  
3           the partnership. That is not also not similar to what the  
4           government is presenting here. Instead it's completely  
5           unrelated to any of the 404(b) factors and would just serve as  
6           propensity evidence from a very long time ago, from 2004 and  
7           2005 or earlier.

8           THE COURT: Thank you. That is very helpful.

9           I do think what I am going to want with respect to  
10          this is for the government to submit to me a three-page  
11          single-spaced letter, and then for the defense to have an  
12          opportunity to respond and for that to be done pretrial.

13          I don't know whether I will rule on it pretrial, but I  
14          take Ms. Glashausser's point that there's an efficiency in  
15          trying to get the issue resolved quickly. And I also take  
16          Ms. Glashausser's point that, particularly with respect to the  
17          ex-wife, it could result in a sideshow.

18          So how quickly can the government put in a letter?

19          MS. SASSOON: Within a couple of days, and perhaps we  
20          can even limit what we're seeking to introduce.

21          THE COURT: Okay. How about either Thursday, the  
22          24th, or Friday, the 25th?

23          MS. SASSOON: Yes, your Honor. Either is fine.

24          THE COURT: Why don't we make it the 24th.

25          And then by 5 p.m. on the 28th, a reply, both single

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1 spaced, three pages.

2 All right. The last issue that I have identified is  
3 the relevance of testimony by or about the witness whose first  
4 name is Cleo.

5 MS. SASSOON: Yes, your Honor. The indictment alleges  
6 a racketeering and extortion conspiracy against college  
7 students and others. She is among the others who is  
8 specifically alleged in the indictment. She was extorted  
9 alongside the other victim within the same time frame using the  
10 same methods and with the same participants.

11 She was subjected to interrogations alongside the  
12 other victims in the case. The extortion was perpetuated by  
13 the defendant with the assistance of Isabella Pollok, his  
14 coconspirator with respect to the other victims. And the fact  
15 that the defendant knew Cleo for a longer period of time  
16 doesn't change the fact that he did not extort her until in or  
17 about 2012, which is within the time frame of the conspiracy.  
18 And she was extorted using the same means and methods of  
19 interrogations and coercion.

20 I provided the Court with a couple of exhibits. The  
21 first letter from Cleo is very long, but the reason I provided  
22 it to the Court is because within that lengthy letter she  
23 apologizes for damaging the defendant, ruining his property,  
24 the same types of confessions you will see from the other  
25 victims. She apologizes for interfering with his summer with

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1 his daughter and her friends. There are e-mails where she is  
2 clearly spending time with the defendant and the other victims.

3 The last attachment that I sent to the Court shows  
4 that Isabella was assisting with this extortion. She transmits  
5 to the defendant the contract for Cleo's Riverside Drive  
6 apartment from which they were trying to take the proceeds.  
7 And so this is direct evidence and if not it's also admissible  
8 404(b).

9 Thank you.

10 THE COURT: Thank you.

11 Ms. Glashausser.

12 MS. GLASHAUSSER: Yes, your Honor.

13 The time seems to have shifted just now in the  
14 government's extortion -- excuse me, in the government's  
15 enterprise letter. It explains that the extortion occurred  
16 between 2010 and 2011, which is relevant because that is  
17 outside of the time period of the alleged enterprise, that the  
18 government was saying that the extortion began about a year  
19 before the government believes the alleged enterprise began.

20 It also has no fact nexus to the alleged enterprise.  
21 The story between Cleo and Mr. Ray starts in the '90s. They  
22 were colleagues and old friends. They then reconnected after  
23 Cleo's ex-husband -- it's kind of a complicated story, but  
24 ended up committing fraud that caused her to lose her job. He  
25 then was accused of murder and she turned to Mr. Ray for help.

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1           So the connection between Mr. Ray and Cleo is nothing  
2     like any of the other complainants in this case. Cleo herself  
3     is nothing like the other people in this case. She is not  
4     quote-unquote vulnerable due to her age. She is decades older  
5     than the other complainants with her own successful career who  
6     lived in her own apartment. There is no allegation that she  
7     ever lived with Mr. Ray or the others.

8           And she describes in the 3500 her relationship to the  
9     other people involved here as really people that she knew  
10    casually. She said they were cordial. They spoke  
11    intermittently.

12          That is not enough to connect this standalone  
13    allegation to the enterprise. It's really something different,  
14    and it would be just 404(b). And it shouldn't be admitted as  
15    404(b). There is enough going on in this case without  
16    introducing other standalone crimes that are not part of the  
17    allegations here.

18          THE COURT: Thank you, Ms. Glashausser.

19          All right.

20          The Court is going to take all of these issues under  
21    advisement.

22          Before we recess, is there anything else from the  
23    defense that I should address today? I have your briefing on  
24    all the other *in limine* issues.

25          MS. GLASHAUSSER: The only thing we wanted to note,

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1 your Honor, is that we have received about 1400 potential  
2 exhibits from the government and do anticipate that we will  
3 have a number of objections to various exhibits either in whole  
4 or in part. We just wanted to flag that for the Court because  
5 usually that happens in the *in limine* process, but because of  
6 the timing of when we received them it could not.

7 THE COURT: Let me ask the government, with respect to  
8 the number of exhibits, first of all, is there any way to pare  
9 it down.

10 And, second, the issue was raised early in this  
11 argument about the exhibits to be offered through Agent  
12 McGuire. I think in terms of efficiency it would be helpful  
13 for you to provide the defense the specific exhibits you intend  
14 to offer through Agent McGuire so that any issues can be teed  
15 up.

16 MS. SASSOON: Yes, your Honor.

17 So our exhibit list was due three weeks before trial.  
18 We definitely erred on the side of being overinclusive as  
19 opposed to, you know, adding a bunch of things on the eve of  
20 trial. We are now in already in the process of removing  
21 exhibits and updating the defense as we remove exhibits.

22 Many of these exhibits also are summarized in several  
23 summary charts that we have provided to the defense and are  
24 continuing to create as a way of again streamlining the  
25 presentation of proof.

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1           So, for example, we have summary charts that  
2       summarize, you know, dozens of e-mails in one chart that  
3       captures a bunch of exhibits all in one. So we don't intend to  
4       play or read all 1400 exhibits to the jury, and as we're  
5       preparing our witnesses we continue is to winnow the proof and  
6       streamline our presentation.

7           THE COURT: When are you going to get them a revised  
8       exhibit list?

9           MS. SASSOON: We are providing on a rolling basis  
10      updated exhibit lists every couple days.

11          THE COURT: I think the only remedy, unless  
12      Ms. Glashausser can tell me otherwise, is if you so overwhelm  
13      them with exhibits and hide the good stuff within a bunch of  
14      other stuff there's always an order of preclusion that I can  
15      issue.

16          MS. SASSOON: No. We are not hiding anything.  
17      Everything on there was added in good faith.

18          Just to give you an example, you know, we included  
19      photographs from the search. As we meet with the witness who  
20      is going to testify about the search, we are going to reduce  
21      the number of photographs from the search. But we included  
22      about, you know, a few hundred e-mails. We intend to introduce  
23      most of them in some form or fashion, even if we are not  
24      reading all of them, some of them through summary charts.

25          We have a bunch of bank records. Those are going to

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1 be conveyed to the jury through summary exhibits from a  
2 forensic expert. So we have not buried our trial exhibits  
3 within an overproduction of too many documents.

4 THE COURT: One thing I am going to do --  
5 Ms. Glashausser, remind me when the defense exhibit list was  
6 due.

7 MS. GLASHAUSSER: I believe it's next Tuesday, your  
8 Honor.

9 THE COURT: You are going to have more time with  
10 respect to that.

11 MS. SASSOON: We do expect most of these exhibits,  
12 your Honor, to the extent we are pulling things, it is to  
13 streamline the trial but, there's a basis to offer all of the  
14 exhibits that are currently on the list.

15 THE COURT: The defense exhibit list will be due on  
16 March 7.

17 Then with respect, Ms. Sassoon, to providing a list of  
18 the exhibits that you intend to offer through Agent McGuire, is  
19 there any --

20 MS. SASSOON: I just want to clarify. There's Agent  
21 Flatley who did the extractions. We have already provided a  
22 chart to defense counsel that lists every single one of those  
23 exhibits grouped by device.

24 So the chart says, you know, Government Exhibit 500 is  
25 is this device. These are the 20 exhibits we are offering from



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1 that device. So they have that from the day our production was  
2 due.

3 THE COURT: Okay.

4 What are you going to put in through Agent McGuire?

5 MS. SASSOON: So through Agent McGuire we are  
6 introducing a number of summary charts, most of them, drafts of  
7 them have been provided to the defense. As we are prepping our  
8 other witnesses we expect to create some additional summary  
9 exhibits that will be timeline slides that will be based on  
10 exhibits that are already on the exhibit list.

11 THE COURT: A little while ago in this argument you  
12 told me that you wanted to offer a whole bunch of exhibits, I  
13 thought through Agent McGuire en masse. If I am mistaken --

14 MS. SASSOON: Through Agent Flatley, your Honor.  
15 Perhaps I misspoke. She is going to testify about some of  
16 those exhibits. Agent Flatley is going to be the witness who  
17 admits those exhibits.

18 THE COURT: Is that where the bulk of your exhibits  
19 are going to come in, through Agent Flatley?

20 MS. SASSOON: So I can explain.

21 We expect to enter stipulations with the defense to  
22 admit exhibits coming off of the e-mails and the iCloud  
23 accounts, and we are in discussions about those proposed  
24 stipulations.

25 We also expect to introduce a number of exhibits

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1 coming off the extracted device that's coming in through Agent  
2 Flatley.

3 We also have exhibits coming in from the FBI agents  
4 who led the search teams of the two search locations, and this  
5 is principally the paper scanned documents. And we have  
6 identified those witnesses and those exhibits.

7 THE COURT: Who are those witnesses?

8 MS. SASSOON: Rachel Graves of the FBI and Christopher  
9 Serra of the FBI.

10 THE COURT: Have you told the defense which exhibits  
11 are going to come in through those two witnesses?

12 MS. SASSOON: We can make that clear to the extent it  
13 is not already clear. It is the paper-scanned exhibits  
14 principally, and the fact that they seized the electronic  
15 devices, but we can provide them a list that divides it between  
16 the two individuals. We can do that today.

17 THE COURT: Is that the bulk of the exhibits in this  
18 case?

19 MS. SASSOON: Yes.

20 The last big category are records like bank records,  
21 records from GoDaddy, from the phone companies. We already had  
22 discussions with the defense where we identified the exhibits  
23 we intend to introduce by way of certification, to say here's  
24 the certification. These are therefore self-authenticating  
25 records.

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1           Apart from a few hotel records that the defense still  
2           has to review, we have come to an agreement that those records  
3           can be admitted by certification without waiving any defense  
4           arguments that on a call, let's say, from a bank between  
5           Felicia and the bank operator it's going to be up to us that  
6           establish that it is in fact Felicia on the call.

7           THE COURT: How far into trial do you expect the three  
8           law enforcement agents to testify through whom you will be  
9           offering this evidence?

10          MS. SASSOON: So that's one question I wanted to raise  
11          with the Court. I expect Rachel Graves will testify very early  
12          on in the trial because she is in her third trimester.

13          With respect to Agent Flatley, we are not exactly sure  
14          when he will testify, but we wanted to offer the exhibits  
15          subject to connection and wanted to know if the Court had an  
16          issue with that.

17          THE COURT: I don't think I will have an issue with  
18          that. But that anticipated one of the issues that I was going  
19          to raise, which is if you were not going to put them in through  
20          the agent, were you going to try to offer them subject to  
21          connection. What I'm getting at is how quickly are the  
22          exhibits going to be in front of the jury either through the --

23          MS. SASSOON: Yes. Our hope would be to introduce  
24          most of the stuff at the very outset through stipulation. For  
25          example, if we have the e-mail stipulation, to read it and to

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1 offer our e-mails and resolve objections and not do it on a  
2 one-by-one basis.

3 We tried in our motion *in limine* to flag the major  
4 categories of potential hearsay and those types of objections  
5 so that if your Honor makes a ruling hopefully that will  
6 resolve objections to many of these exhibits.

7 THE COURT: All right. So are you saying that by the  
8 end of the week you will be able to tell the defense through  
9 which witness you are intending to offer which category of  
10 documents?

11 MS. SASSOON: Yes. Sooner than the end of the week,  
12 your Honor.

13 THE COURT: Okay. Mr. Kelly?

14 MR. KELLY: For the record, this is Neil Kelly.

15 On the certifications and the stipulations, your  
16 Honor, the government is correct in terms of the  
17 self-authenticating certifications.

18 I think we've largely reached agreement on those. I  
19 did want to clarify, in terms of the e-mails and files on the  
20 iCloud, I think what we are working towards is a stipulation to  
21 the authenticity of these documents so that they might be  
22 what -- you know, they might be files from X iCloud account or  
23 X e-mail address. We are not stipulating to their  
24 admissibility. So I don't think the government was trying to  
25 overstate there, but I do want to correct the record.

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1 I don't anticipate that we are going stipulate writ  
2 large that all the e-mails could come in for the truth of the  
3 matter therein. There might still be hearsay objections.  
4 There might be other objections to the individual files, which  
5 sounded like it was animating the court's original question,  
6 which was, when are certain of these exhibits going to be  
7 offered.

8 To the extent there are objections like this, they  
9 will need to be resolved. So, again, I don't think the  
10 government was overstating our discussions. I just wanted to  
11 clarify for the record that what we are stipulating to for  
12 individual files within the larger collection on the iCloud  
13 accounts, for example, is somewhat different than the  
14 government stated. We are not stipulating to their  
15 admissibility.

16 THE COURT: That's very helpful.

17 Ms. Sassoon, it really has to do with the presentation  
18 of your case and you working it out with the defense to isolate  
19 the exhibits that I am going to have to rule on. The sooner  
20 you are able to do that the more smoothly your case goes in.

21 So what I propose is that --

22 MS. SASSOON: Yes.

23 THE COURT: -- you address issues with respect to the  
24 pretrial conference. You tell me if you've got another  
25 approach. I understand what the defense is saying when they

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1 say they have got a lot of exhibits to deal with.

2 MS. SASSOON: Yes, your Honor. We will continue to  
3 think about ways to resolve as much as possible before trial.

4 On that front, I did have a question about your  
5 Honor's preferences. Some judges in this district permit and  
6 some do not permit the publishing of exhibits without a witness  
7 on the stand. We are interested in knowing your position on  
8 that, not to put you on the spot, whenever your Honor is  
9 prepared to let us know. And we do intend to use a summary  
10 paralegal witness who will read e-mails on the stand that are  
11 not being introduced through other witnesses.

12 THE COURT: Tell me one other thing, Ms. Sassoon. Are  
13 you intending to ask that the jurors have binders with the  
14 exhibits in addition to publishing them through the monitor, or  
15 have you worked that out yet?

16 MS. SASSOON: I could see two potential categories for  
17 a binder, transcripts as an aid to the jury. And we are  
18 working on finalizing those, but we have provided drafts to the  
19 defense.

20 Then one thing to work out with the Court and defense  
21 counsel is publishing sensitive exhibits that if the Court  
22 decides they remain under seal I think that can be done through  
23 the monitors without publishing it on the public monitor. So  
24 that's what we would propose for that.

25 THE COURT: Yes. As to that, we are going to have

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1 address that at the pretrial conference, and then maybe, as it  
2 comes up, because the victims have interests, the defendant's  
3 rights are paramount obviously, the public also has an  
4 interest. So even if you and the defense agreed, I need to  
5 take into account the public interest, which I am not going to  
6 do right now. But I understand the issue.

7 Does the defense have a position with respect to  
8 exhibits to the jurors, any of these issues, here now?

9 MS. GLASHAUSSE: Our concern right now is that we do  
10 not anticipate having our prepared objections to all 1400  
11 exhibits by the pretrial conference. So just going back to  
12 where we started today --

13 THE COURT: I am not going to require you at the  
14 pretrial conference --

15 MS. GLASHAUSSE: I appreciate that, your Honor.  
16 Where we started today was talking about scheduling. We do  
17 anticipate that we'll probably have to litigate a number of  
18 these issues mid trial, which is why having time either in the  
19 morning, when Mr. Ray will already be here, or in the afternoon  
20 I think would be helpful to the smooth presentation of the  
21 trial in front of the jury.

22 THE COURT: I understand that. But just to give you a  
23 preview of my thinking, I haven't decided how long the trial  
24 day is going to be.

25 It's been my experience that it's most helpful to

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1 address issues at the end of the trial day rather than at the  
2 beginning of the following trial day for two reasons:

3 First of all, if the issue ends up taking longer than  
4 any of us anticipate, I don't want to run into the jury's time  
5 in the morning.

6 And second, I think it would be better for all of you  
7 if you get rulings at the end of a trial day that you are able  
8 to then prepare for the next day.

9 So that's my thinking. I understand that there are a  
10 lot of issues in this case, and you are going all to be busy  
11 briefing them, arguing them to me, and I am going to be busy  
12 trying to decide them.

13 Anything else, Ms. Sassoon, from your perspective?

14 MS. SASSOON: Either today or at the next conference,  
15 we can make a record of plea discussions with the defendant.

16 THE COURT: That would be helpful.

17 MS. SASSOON: Would you prefer today or at the next  
18 conference?

19 THE COURT: Next conference.

20 Ms. Glashausser?

21 MS. GLASHAUSSER: Yes, your Honor.

22 Mr. Ray still has not received the drive with the  
23 government's exhibits or the stamped 3500.

24 MS. SASSOON: That's the first --

25 THE COURT: Are you giving it to Ms. Bracewell to deal



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1 with, Ms. Sassoon.

2 MS. SASSOON: No.

3 MS. BRACEWELL: We are having to address that. We had  
4 a drive hand delivered by an intern, as far as we understood, a  
5 week and a half ago. This is the first we have heard that it  
6 was not successfully received. We don't have any other  
7 information to offer right now, but certainly can follow up  
8 immediately.

9 THE COURT: Okay. Why don't you send me a letter by  
10 the end of the day today.

11 MS. SASSOON: What I do know is that the MDC received  
12 your Honor's order over the weekend and was giving him the  
13 three hours a day with the laptop, but I guess that doesn't  
14 address the issue of what was available to him.

15 THE COURT: Ms. Glashausser, I appreciate you raising  
16 this issue.

17 Any others?

18 MS. GLASHAUSSER: No, your Honor.

19 Although with respect to timing, we received the  
20 government's exhibits just last week. So perhaps there's some  
21 confusion about dates that the government will address in their  
22 letter.

23 THE COURT: Okay. You can all discuss after we break  
24 today what you are missing, and the government will let me know  
25 the status with respect to information to Mr. Ray.

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1 All right. We will take -- Ms. Sassoon?

2 MS. SASSOON: The last thing, I just wanted to alert  
3 the Court that the last document we transmitted this morning  
4 was a draft tax loss computation from the IRS agent.

5 And I also just wanted to put on the record the  
6 government did not intend to mislead the Court about the  
7 discussions with the defense counsel.

8 Ms. Lenox put in a letter after ours recounting a  
9 conversation that happened after the last conference. She is  
10 correct that we did have a discussion related to summary  
11 exhibits, including of the tax witness.

12 The government did not intend to create a misleading  
13 impression there, only to convey that we had not received any  
14 sort of written or clear communication that we had not provided  
15 expert notice or that we were not complying with the legal  
16 requirement to provide tax loss amount.

17 THE COURT: Thank you, Ms. Sassoon.

18 Ms. Bracewell, I hope I didn't disappoint that you are  
19 not arguing the tax witness.

20 MS. BRACEWELL: You certainly did not.

21 THE COURT: Thank you all for excellent argument.

22 We are adjourned.

23 (Adjourned)  
24  
25